

WHITE HOUSE CONTACTS WITH TREASURY/RTC OFFICIALS ABOUT "WHITEWATER"-RELATED MATTERS — PART 1

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HEARING BEFORE THE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS HOUSE OF REPRESENTATIVES ONE HUNDRED THIRD CONGRESS SECOND SESSION

—
JULY 26, 1994
—

Printed for the use of the Committee on Banking, Finance and Urban Affairs

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WHITE HOUSE CONTACTS WITH TREASURY/RTC OFFICIALS ABOUT “WHITEWATER”-RELATED MATTERS—PART 1

TUESDAY, JULY 26, 1994

**HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,
*Washington, DC.***

The committee met, pursuant to notice, at 9:30 a.m., in room 2128, Rayburn House Office Building, Hon. Henry B. Gonzalez [chairman of the committee] presiding.

Present: Chairman Gonzalez, Representatives Neal, LaFalce, Vento, Schumer, Frank, Kanjorski, Kennedy, Flake, Mfume, Waters, LaRocco, Orton, Bacchus of Florida, Klein, Maloney, Deutsch, Gutierrez, Rush, Roybal-Allard, Barrett, Furse, Velazquez, Wynn, Fields, Watt, Hinchey, Dooley, Klink, Fingerhut, Leach, McCollum, Roukema, Bereuter, Ridge, Roth, McCandless, Baker, Nussle, Thomas, Johnson, Pryce, Linder, Knollenberg, Lazio, Grams, Bachus of Alabama, Huffington, Castle, and King.

The CHAIRMAN. The committee will please come to order.

The committee meets pursuant to notice, and also in this case pursuant to House Resolution 394, to conduct hearings on the so-called Whitewater affair. These hearings will cover the completed phase of the investigation conducted by the independent counsel, consistent with the agreement announced by the bipartisan House leadership on June 17.

Before I take a few minutes to discuss the hearing and its procedure and opening statement, I want to announce that Mr. Mfume, our colleague, also the chairman of the Black Caucus, requested that I read this.

The President has called a meeting with the members of the Congressional Black Caucus, whose chairman, Kweisi Mfume, and several other members, including Ms. Waters, Messrs. Flake, Rush, Wynn, Fields, and Watt, serve on the Banking Committee. Their absence this morning is due to their meeting with the President regarding issues surrounding the Crime bill. We expect and have been asked to communicate their intent to fully participate in these important proceedings as early as possible this morning or this afternoon.

At least the first thing, I would like to dispose of is one matter. The leadership agreement charges us, among other things, to have hearings on, quote, “whether the death of assistant White House counsel Vincent Foster was a homicide or a suicide,” end of quote. I submit that neither we nor any other committee in the Congress has the expertise to determine such a question.

I submit that neither we nor any other committee in the Congress has the expertise to determine such a question.

Let me say by way of explanation also, when the Speaker had a brief colloquy with me on the House floor to explain what he had announced to the press about designating the Banking Committee, I said we would take the charge, we would pursue it, we would see it through, but only on the basis that the integrity of the committee would never be compromised, which is the identical position I have taken since I have chaired this committee or any other subcommittee before that.

So that in this case it is obvious that the leadership's words about us investigating the circumstances of the death of Mr. Foster and to determine whether it was, incredibly, a homicide, or suicide, is absolutely outside the purview of the charge of this committee, and I think eventually would bring ridicule and contumely on this House and the Congress if we were to pursue that.

I submit that no responsible person would dispute the findings of the independent counsel on this question. He has already submitted his findings. And I submit that absolutely no public good would come or would be served by a public hearing on a subject that is clearly closed and whose airing would further torment Mr. Foster's innocent family.

Therefore, I ask unanimous consent that the committee agree it will not conduct hearings on the question of Mr. Foster's death. We should simply accept Mr. Fiske's finding, not hinder his investigation.

In addition, Mr. Foster's family has made pleas that the bounds of decency be observed and their privacy respected. And I think they are right.

Is there any objection to my request?

Mr. LINDER. Reserving my right to object, Mr. Chairman, are you suggesting that no questions may be asked regarding the circumstances of Mr. Foster's death?

The CHAIRMAN. I think that is right.

Mr. LINDER. Then I object.

The CHAIRMAN. I move the question, then.

All in favor signify by saying aye.

Opposed, no.

Call the roll.

The CLERK. Mr. Gonzalez.

The CHAIRMAN. Aye.

The CLERK. Mr. Neal.

Mr. NEAL. Aye.

The CLERK. Mr. LaFalce.

Mr. LAFALCE. Aye.

The CLERK. Mr. Vento.

Mr. VENTO. Aye.

The CLERK. Mr. Schumer.

Mr. SCHUMER. Aye.

The CLERK. Mr. Frank.

Mr. FRANK. Aye.

The CLERK. Mr. Kanjorski.

Mr. KANJORSKI. Aye.

The CLERK. Mr. Kennedy.

[No response.]
 The CLERK. Mr. Flake.
 [No response.]
 The CLERK. Mr. Mfume.
 [No response.]
 The CLERK. Ms. Waters.
 [No response.]
 The CLERK. Mr. LaRocco.
 Mr. LAROCO. Aye.
 The CLERK. Mr. Orton.
 Mr. ORTON. Aye.
 The CLERK. Mr. Bacchus of Florida.
 [No response.]
 The CLERK. Mr. Sanders.
 Mr. SANDERS. Aye.
 The CLERK. Mr. Klein.
 Mr. KLEIN. Aye.
 The CLERK. Mrs. Maloney.
 Mrs. MALONEY. Aye.
 The CLERK. Mr. Deutsch.
 [No response.]
 The CLERK. Mr. Gutierrez.
 Mr. GUTIERREZ. Aye.
 The CLERK. Mr. Rush.
 [No response.]
 The CLERK. Ms. Roybal-Allard.
 Ms. ROYBAL-ALLARD. Aye.
 The CLERK. Mr. Barrett.
 Mr. BARRETT. Aye.
 The CLERK. Ms. Furse.
 Ms. FURSE. Aye.
 The CLERK. Ms. Velazquez.
 [No response.]
 The CLERK. Mr. Wynn.
 [No response.]
 The CLERK. Mr. Fields.
 [No response.]
 The CLERK. Mr. Watt.
 [No response.]
 The CLERK. Mr. Hinchey.
 Mr. HINCHEY. Aye.
 The CLERK. Mr. Dooley.
 Mr. DOOLEY. Aye.
 The CLERK. Mr. Klink.
 Mr. KLINK. Aye.
 The CLERK. Mr. Fingerhut.
 Mr. FINGERHUT. Aye.
 The CLERK. Mr. Leach.
 Mr. LEACH. Pass.
 The CLERK. Mr. McCollum.
 Mr. MCCOLLUM. No.
 The CLERK. Mrs. Roukema.
 Mrs. ROUKEMA. No.
 The CLERK. Mr. Bereuter.

Mr. BEREUTER. No.
 The CLERK. Mr. Ridge.
 [No response.]
 The CLERK. Mr. Roth.
 Mr. ROTH. No.
 The CLERK. Mr. McCandless.
 Mr. McCANDLESS. No.
 The CLERK. Mr. Baker.
 Mr. LEACH. No by proxy.
 The CLERK. Mr. Nussle.
 Mr. NUSSLE. No.
 The CLERK. Mr. Thomas.
 [No response.]
 The CLERK. Mr. Johnson.
 Mr. JOHNSON. No.
 The CLERK. Ms. Pryce.
 Ms. PRYCE. No.
 The CLERK. Mr. Linder.
 Mr. LINDER. No.
 The CLERK. Mr. Knollenberg.
 Mr. KNOLLENBERG. No.
 The CLERK. Mr. Lazio.
 Mr. LAZIO. No.
 The CLERK. Mr. Grams.
 Mr. GRAMS. No.
 The CLERK. Mr. Bachus of Alabama.
 Mr. BACHUS OF ALABAMA. No.
 The CLERK. Mr. Huffington.
 Mr. HUFFINGTON. No.
 The CLERK. Mr. Castle.
 Mr. CASTLE. No.
 The CLERK. Mr. King.
 Mr. KING. No.
 The CHAIRMAN. Mr. Clerk, Mr. Flake is aye by proxy.
 The CLERK. Mr. Kennedy.
 Mr. KENNEDY. Aye.
 The CHAIRMAN. Mr. Mfume is aye by proxy.
 Ms. Waters is aye by proxy.
 Mr. Bacchus is aye by proxy. That is Bacchus with two "c"s.
 Mr. Deutsch, aye by proxy.
 Mr. Rush is aye by proxy.
 And Ms. Roybal-Allard is here.
 Mr. Wynn is aye by proxy.
 Mr. Fields is aye by proxy. Mr. Watt is aye by proxy.
 Mr. Leach.
 Mr. LEACH. How is Mr. Thomas recorded?
 The CLERK. Mr. Thomas is not recorded.
 Mr. LEACH. No by proxy.
 How am I recorded?
 The CLERK. Mr. Leach, you are not recorded.
 Mr. LEACH. No.
 The CLERK. Ms. Velazquez, you are not recorded.
 Ms. VELAZQUEZ. Aye.
 The CLERK. Mr. Chairman, the ayes are 31, the nays are 19.

The CHAIRMAN. There being 31 ayes and 19 nays, the motion is agreed to.

As members know, both House Resolution 394 and the bipartisan leadership agreement contemplates that the hearings will be, quote, "structured and sequenced" so that they will not interfere with the ongoing investigation of special counsel Robert B. Fiske, Jr.

I ask unanimous consent that these documents be included in the record at this point. Is there any objection?

Hearing none, it is so ordered.

[The information referred to can be found in the appendix.]

At the time of the bipartisan leadership agreement, it was expected that Mr. Fiske would have fully completed his work on the three areas commonly called the Washington phase of his investigation. To wit, the death of Vincent Foster, the White House Treasury contacts with the Resolution Trust Corporation related to the Madison Guaranty Savings of Arkansas, and the White House handling of Mr. Foster's papers following his death.

However, on July 15, Mr. Fiske advised that he has not completed his work on the handling of Mr. Foster's papers. Accordingly, in order to be consistent with the directive of the resolution and the bipartisan leadership agreement, the handling of Mr. Foster's papers is not a subject of the hearings we are undertaking today.

These hearings have been assigned to this committee and the Chair has been surprised and dismayed to learn the minority of the Committee on Government Operations apparently has been freelancing and has made numerous inquiries and obtained a great deal of information, including documentation from Mr. Fiske, without the knowledge of the committee or the majority on that committee. I think this is deplorable, and not helpful to an orderly process in our House.

Now, a few words about procedure. I want to advise the members that when a question or subject is raised that falls outside the scope permitted by House Resolution 394 and the House bipartisan leadership commitment, witnesses will be advised they need not respond. The Chair hopes to be liberal, as it always has been, but must at the same time observe the proper limits under which we are directed to operate. The Chair earnestly requests the cooperation of all members in avoiding areas and issues that could compromise other conflicts with Mr. Fiske's ongoing investigation.

Our purpose here is to elicit information for the use of the Congress. As I have said repeatedly, ad nauseum, we are not here to prosecute anybody. We are not a judicial body. We are not a prosecutorial body. I think that the records since 1989 ought to be clear in that respect. But I have to remind you again.

And I also want to remind the members that our witnesses are here voluntarily and are entitled to our full respect. They have not been accused of crimes, and I repeat we are not here to charge, prosecute, or judge questions of guilt or innocence.

Our witnesses will be sworn even though our general practice has been not to require the swearing of witnesses who appear voluntarily. No one should draw any inference from this. The consensus is in this case all witnesses should be sworn in and that will

be the procedure. And I am respecting the request of the minority in that respect from the outset.

The questioning will be conducted under the 5-minute rule in order that all members can have an equal opportunity as specified in the committee rules and in House rule 112(j). The Chair, as always, will be considerate and fair to members who are in midquestion when their time expires. However, the Chair also requests that members carefully observe the time in order that everyone can have a fair opportunity.

And the Chair will not tolerate abuse of this privilege under this rule 11.

Where members are referring to papers in the questioning of a witness, the Chair will expect the witness to be provided with the relevant papers. The Chair would also expect that such papers will be made available to all members for their reference. This will help ensure fairness to all of the parties concerned.

Questions have been raised concerning how our witnesses are to be empaneled. For the sake of efficiency, the committee generally hears witnesses in panels. The Chair will endeavor to arrange to hear witnesses in a reasonable, logical way but also in a way that does not cast unfair light on a given individual. This has been the practice in all of our hearings.

A question was also raised as to whether questions by staff will be permitted. The committee has never done so in the past because the purpose of a hearing is to provide information to the members, not the staff. I expect members to be fully capable, as I have in the past, of asking their own questions today no less than on the past occasions, as I say.

I have been asked whether long blocks of time could be assigned to the two sides who will designate a questioner or questioners to occupy the time. Members may yield to a colleague when their turn arises, but under rule 11, each member proceeds under the 5-minute rule. And the rule does not proceed for waiver or exception.

The Chair can permit very limited additional time to a member only under unanimous consent, as is a practice in the House, and again, avoiding any attempt to abuse that privilege.

This morning the House and Senate are to meet in a very historic joint session to receive His Majesty, King Hussein, of the Hashemite Kingdom of Jordan, and His Excellency, Prime Minister Rabin of Israel. This joint session is without precedent, a most historic occasion. At the proper time the Chair intends to declare a recess so the members may attend.

Again, the rules are clear as are the rules governing caucus meetings of the respective parties, which we have respected in the past and intend to do so, because fundamentally, the rules, as they have been since I have been chairman, will be strictly adhered to with no privileges or deviations therefrom to myself or anybody else.

And now let me go to the brief statement.

Today we will begin our review of the contacts between the White House Treasury and Resolution Trust Corporation related to the so-called Whitewater affair. During these past months there have been innumerable inflammatory, even scurrilous, and absolutely false claims about one aspect or another of this matter. One

by one these claims have proved to be outright lies and they have fallen by the wayside in the open glare of the good, open, American tradition in our news disseminating system, and they have turned out to be either outright lies or distortions or exaggerations.

Yet, not even the thorough and dispassionate work of the independent counsel has satisfied or silenced the more extreme critics, some of whom continue to make violent, untrue statements in the House and elsewhere.

The independent counsel has reached some important conclusions, and as we begin these hearings, those conclusions should sober even the most passionate of the political bounty hunters. These are the conclusions drawn by the independent counsel, and they should provide a true perspective.

One, Vincent Foster, who was then the Assistant White House Counsel, was not murdered, nor do any of the lurid details or sensational rumors concerning his death contain a shred of truth. Mr. Foster did not kill himself because of any guilty knowledge about Whitewater. Instead, he was tormented by a series of accusatory, venomous editorials about work on a different matter. He was exhausted, overworked, and depressed to the point that the President himself sought to intervene and cheer him up. His family tried to get medical help and Mr. Foster apparently did make——

Mr. KING. Mr. Chairman, point of order.

Mr. BACHUS OF ALABAMA. Mr. Chairman, you are now discussing the circumstances surrounding the death of Vince Foster?

The CHAIRMAN. No, sir. I am reporting on the findings of the counsel.

Mr. BACHUS OF ALABAMA. Does that violate the vote that this committee just had?

The CHAIRMAN. I would hardly think so since it is my opening statement and I am explaining the parameters, once again.

Three, with respect to the celebrated, excruciatingly detailed contacts between the Treasury, White House, and RTC about Whitewater, the investigator's report, the special counsel's report indicates no laws were broken and there was no intent to influence or corrupt any investigation on the subject, and it is doubtful that any ethical standards were violated. But as we go into the hearing, the members in that proper area are entitled to ask questions.

We will hear a great deal about these matters, and of course, there will be allegations raised. However, everyone should remember this, that as far as this phase of the special counsel's investigation is concerned, he has rendered his report. And what I am saying is, under our obligation, under both the House Resolution 394 and the bipartisan leadership's agreement, we must respect that on the request of the counsel. So that the rest is, well, as you will see, to be decided.

So that the hearings, as we go about this, will be thorough and complete, we will follow every single available and responsible course within the scope of House Resolution 394 and the leadership agreement in accordance with that resolution.

And with that, I recognize Mr. Leach for his statement.

[The prepared statement of Mr. Gonzalez can be found in the appendix.]

Mr. LEACH. I thank the distinguished chairman.

Mr. Chairman, I have a very lengthy statement that I would like unanimous consent to be put in the record as well as extensive documentary material. And I would like to ask unanimous consent that it also be placed in the record.

The CHAIRMAN. Is there any objection to the request?

Hearing none, it is so ordered.

Mr. LEACH. Mr. Chairman, today we begin the committee's investigation of the Madison Whitewater affair as mandated by House Resolution 394. This initial part of the probe is not about personal gain, nor criminal conduct; it is about public ethics.

The public can expect several surprises from these hearings. One, fireworks will be limited. Two, disclosures will be more subtle than bombastic. And three, there will be no villains.

Regarding fireworks, it should be emphasized that the minority chafes at the limited subject matter the majority party has allowed to be placed on the table. Nonetheless, we are prepared to abide by the Chair's rulings on the subject restraints on the assumption that hearings on the heart of Whitewater will be held at some point.

Breaches of the public trust, after all, cannot for long be shielded in a democracy. For the public to understand the context of these hearings, it should be noted that they are being held in inverse chronological and substantive order. It is not Whitewater, the issue of whether taxpayer dollars were diverted by a federally insured savings and loan and small business investment corporation to the advantage of a public official, but rather the administration's handling of criminal referrals related to Whitewater, that is currently under review.

Discussion of Whitewater is off the table because the majority party has crafted an approach, reflected in a leadership agreement, that allows for hearings on only about 5 percent of the Whitewater affair. However, neither the House resolution, nor the leadership agreement, obviates the law.

This committee is statutorily required to hold RTC oversight hearings, and just as recommendations of the special counsel do not override constitutional obligations of members, recommendations of congressional leadership do not take this committee off the hook for failure to hold oversight hearings on the RTC in which the failure of an Arkansas S&L would be open for consideration.

Regarding disclosure, some may ask: Is this issue overblown? If anyone considers public ethics incidental, the answer is, of course, yes. On the other hand, many of us believe how the political game is played matters. Indeed, it is questionable in a democracy whether citizen respect for government can be maintained if as much attention isn't given to the "how" of process as to the "what" of policy.

Some have asked: Hasn't consideration of this issue been too long? The answer here is a most definitive "yes," but the minority would query, who is responsible for the extended review? The party that simply asked that a hearing be held 9 months ago, or the party that at every stage has refused full disclosure, chosen to mislead the public, refused to provide standard oversight documentation, employed obfuscating redaction techniques, and to this day refuses public review of circumstances surrounding losses of public funds in the State of Arkansas?

What the minority intends to underscore is that it is important to ensure that accountability applies to all and that oaths of office relate to obligations undertaken to defend the Constitution and the rule of law, not the political fortunes of any individual.

What the minority intends to show is that the executive branch has been less than candid with the American people and that a government of, by, and for the people cannot credibly be carried out without candor.

In this regard let me stress as well that this committee will hear from a variety of witnesses, all of whom are decent, hard-working individuals who have chosen public service at some sacrifice. The minority has no desire to tarnish anyone's reputation, nor suggest or imply criminal conduct.

This is not a trial. These hearings are about public ethics, pure and simple. On the landscape of political scandals, Whitewater may be a bump, but it speaks mountains about me-generation public ethics as well as single-party control of certain States, cities, and the U.S. Congress.

Whitewater is about the arrogance of power. It is a metaphor for privilege, for a government run by a new political class which takes shortcuts to power with end runs of the law.

One of the extraordinary philosophical issues that underlies today's proceedings is the unprecedented abdication of congressional oversight responsibility rationalized by the appointment of a special counsel. Never before has the legislative branch authorized an agent of the executive branch to limit the scope of congressional oversight.

Two weeks ago in the context of consideration of a lawsuit I filed against the Resolution Trust Corporation and the Office of Thrift Supervision, U.S. District Court Judge Charles Richey pointedly remarked, and I quote, "I don't believe the independent counsel has the power to tell Congress what they have to look into and when. The majority's use of the 'Fiske defense as a shield against executive probes is a blatant abuse of separation of powers principles."

Procedurally, it should be noted that the minority is currently engaged in one of the most profound checks-and-balances engagements with the executive branch in the modern history of the Congress. This engagement carries far greater implications than any judgment relating to a particular embarrassment of a particular public official at a particular time, because at issue is precedent: Whether in future circumstances the oversight capacities of Congress can be hamstrung if the majority party of Congress is the same as that in control of the executive branch and chooses to refrain from its oversight obligations in order not to embarrass its party or leaders' standing.

Regarding the death of Vincent Foster, which had been one of the two subject matters prescribed as relevant to this hearing, I would stress that the minority had no desire to probe the forensic aspects of the Fiske Report. While at the time of his death Mr. Foster had under active review a number of issues from Travelgate to preparation of the tax returns for the Whitewater Development Corp., I accept without qualification the two fundamental premises of the Fiske Report: One, that Vincent Foster suffered from depres-

sion, a disease that inexplicably darkens the spirit and soul, and; two, that his death was indeed a suicide.

While there may be certain unanswered questions regarding precipitating concerns and circumstances, it must be understood that in suicides, this is more the norm than the exception. What matters in the end is not what troubled Mr. Foster before his death, but what a magnificent contribution he made to life. From all accounts he was an honorable man who ennobled public service.

As we begin to examine the facts and circumstances of the Madison Whitewater situation, a picture emerges of a Federal regulatory process which from the inception of this administration, appears to have been hijacked by political forces; of a Congress which has refused to comply with the law; of a committee which has thumbed its nose to a statute it originated; of an administration which says one thing and does another; and of a great political party which has abandoned its open government tradition.

I will spare you some of this.

Let me go on to the issue of the moment, to the report that is about to be issued to us today by Mr. Cutler.

In media interviews this past week the President's counsel, Lloyd Cutler, suggested that while there were too many contacts by White House personnel, no harm had been done. The President's lawyer misses the point. If RTC-Kansas City had not courageously stuck to its convictions, accountability would have been forsaken.

As for precedent, the high level contacts, telephone calls, and memoranda invariably chill the chain of command in the agencies, and when knowledge of Washington concerns, no matter how carefully crafted and expressed, reaches down into the offices where responsibility for the development of criminal referral resides, the temperature plummets to well below freezing.

Mr. Cutler suggests that it is the norm for the White House to be notified of criminal referrals touching it because the President can thence be properly apprised of who he should not appropriately contact. Yet, Mr. Cutler fails to note the unprecedented implication of a government official at any level being apprised of the development of criminal referrals at a time he is in a position of authority to influence the course of investigation.

In this regard, Mr. Cutler also fails to note the import of RTC-PLS's efforts to seek modifications in the referrals developed by the criminal investigations unit in Kansas City. Mr. Cutler also fails to explain how it is that despite having been briefed on the referrals, the White House, within a few days of the referrals being sent by Kansas City to the Justice Department, allowed the President to meet with Gov. Jim Guy Tucker who press inquiries noted may have been mentioned as a subject of one of referrals. And, within a few months of initial notification, the President at his initiative personally met with the top regulator, the Comptroller of the Currency, to seek his assistance.

The rationale for informing the President, to the degree it may be credible, was apparently lost on this lawyer occupant of the White House. More profoundly, the minority does not accept the assumption of Mr. Cutler that it is appropriate for the President or the White House to be informed of confidential criminal actions being contemplated within independent regulatory bodies, espe-

cially if such actions touch the White House. It is precisely because the highest ranking political figure has the prospect of influencing law enforcement that the case for inside notification is so totally unpersuasive.

Equally unpersuasive is Mr. Cutler's repeated suggestion that because the Clintons were regarded as only potential witnesses, referral information was not sufficiently sensitive to keep it from the First Family. Experience clearly shows that in the area of criminal investigations, an individual who is a witness at the early stages of such investigations can become a target after further probing, especially if that witness was a beneficiary of a financial scheme under investigation.

That possibility is reason alone to require all government officials, including White House counsel and staff, to keep from the First Family any nonpublic information relating to a criminal referral.

Whitewater as a monetary conflict appears modest in relation to the attention it has been given. In terms of symbolism—both as the disjunction of private and public ethics and as a case study in how not to handle scandal—Whitewater takes on more significance.

But fairness to the President demands it be clear that Whitewater is not Watergate. Accountability is in order; a constitutional crisis is not.

There are advantages to undivided government and the ending of the gridlock which sometimes eventuates when a party is not controlled by a President's political party. Nevertheless, arduous oversight is too often a casualty of one-party governance, when the majority party lacks the desire or the backbone to pursue oversight policies potentially embarrassing to its leadership.

Government is based on trust. Trust is a product of candor. Candor appears best impelled in our system of checks and balances when oversight is vigorous. That is the reason hearings of this nature are so vital to the functioning of our democracy.

Mr. Chairman, I have simply stated about a quarter of my statement. The rest will be in the record.

Thank you.

[The prepared statement of Mr. Leach and the documentary material referred to can be found in the appendix.]

The CHAIRMAN. The Chair will now proceed to advise the photographers that under the rules of the House, it is contrary to those rules for the photographers to interpose themselves between the witnesses and the members of the committee.

Mr. NUSSLE. Mr. Chairman, I believe there are a number of us that have opening statements that we have prepared, and I would ask unanimous consent that we be allowed to insert them in the record at this point.

The CHAIRMAN. Yes. The Chair was going to announce that.

All the members, present and absent, will have the entitlement that we usually have to submit opening statements that will appear in the record as opening statements at this hearing.

I thank the gentleman.

[The prepared statements referred to can be found in the appendix.]

As I said earlier and indicated, because we must proceed expeditiously in the numerous membership of this body, I would love to give, as I always have, and the gentleman knows, every member a chance to say what he wants to at the outset. But under the circumstances we will do it this way.

I will ask the witness to rise. We will proceed with the matter on hand.

[Witness sworn.]

The CHAIRMAN. You may be seated and proceed.

I want to express my gratitude for your statement that you gave us this morning in time for us to read it over. You may proceed as you deem best.

Mr. KING. Point of order, Mr. Chairman. Will the statements be made available to the members of the committee?

The CHAIRMAN. They are. Does every member have a copy now?

Mr. BACHUS OF ALABAMA. Mr. Chairman, I would like the record to show we were given this report at this point and not before, or his testimony.

The CHAIRMAN. I believe the record reflects that anyway. And the Chair will say that we received this statement. So that Mr. Cutler presented his prepared testimony this morning when he came in. And I think the record reflects that fact. Even if he had not prepared testimony, we would proceed as we are now.

Thank you, Mr. Cutler. You may proceed as you deem best.

TESTIMONY OF HON. LLOYD CUTLER, SPECIAL COUNSEL TO THE PRESIDENT OF THE UNITED STATES

Mr. CUTLER. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, my name is Lloyd Cutler. Since March 10 I have been special counsel to the President. Since the beginning of April, when Mr. Bernard Nussbaum's resignation became effective, I have been performing the duties of counsel to the President. I had previously held this position under President Carter, and in 1989 I was a member of President Bush's Commission on Federal Ethics Law Reform.

I am here today to present the White House's position on the ethical propriety of certain White House contacts with the Treasury officials concerning the Resolution Trust Corporation's inquiries into a failed savings and loan called Madison Guaranty.

President Clinton has directed me and the White House staff to cooperate fully and openly both with the investigation of Independent Counsel Robert Fiske and with the oversight committees of the Congress. We have done so, and will continue to do so. No White House staff witness has declined to appear. We have produced thousands of pages of documents requested by the committees. And we appreciate your statement, Mr. Chairman, that we have cooperated fully.

We recognize the right of Congress to conduct this inquiry, and we take it very seriously. In our system, the President and the Congress must cooperate on smaller as well as larger matters.

We are opening these Madison Guaranty-Whitewater hearings on the very same day, as you noted, that Prime Minister Rabin of Israel and King Hussein of Jordan will address a joint session of Congress one day after they signed a declaration in Washington,

with the President as witness, outlining the principles for a treaty of peace between their countries. There could be no more profound demonstration of how diligently the Congress and the President can work together to make the national government as open and productive as we can.

Let me now take up these Treasury-White House contacts. As you know, Independent Counsel Fiske has interviewed, deposed, or taken before the grand jury every Treasury and White House official involved in the so-called Treasury-White House contacts during the period of September 1993 through February 1994. These contacts originated in the fall of 1993 at the time the RTC reportedly made a number of criminal referrals to the Department of Justice on various matters involving a failed S&L called Madison Guaranty.

A criminal referral, as you know, is a recommendation that the Department consider undertaking an investigation, and if the evidence warrants, bringing a criminal charge against one or more persons. The final decision whether to do so, of course, is up to the Department.

According to press reports, these referrals apparently mentioned, among other matters, a 1978 joint real estate venture called Whitewater, between the chairman of Madison Guaranty, Mr. James McDougal, and President and Mrs. Clinton, as well as some campaign contributions to a Clinton gubernatorial campaign.

As you also know, Mr. Fiske concluded there was no basis for a criminal prosecution under the ethics laws or any other laws as to any of the Treasury or White House officials who took part in these contacts. He expressed no opinion on whether these contacts involved any violation of noncriminal ethical standards or gave rise to any other concerns.

As to the White House staff members, those are the questions Chief of Staff Mack McLarty had asked me to review when I returned to the counsel's office. And the results of that review are covered in this statement.

In summary, I have concluded there was no violation of any ethical standard, but that it would have been better if some of the issues that arose had been handled differently than they were.

I have also recommended measures to assure that future contacts between the White House and executive branch agencies with law enforcement responsibilities will be beyond any reasonable challenge.

Before discussing the Treasury-White House contacts and the ethical questions they present, I want to stress that nothing happened as a result of these contacts. No White House staff member made any effort to change any decision by the RTC, and no decision by the RTC was changed. These contacts had no impact on the real world of the RTC's activities.

Attached to my statement is a chronology of the Treasury-White House contacts that occurred from September 1993 through February 1994, and the substance of each, so far as I have been able to determine. Where the participants do not substantially agree on what was said, the chronology sets forth the principal differences.

For the most part, the differences are the typical variations in recollection of different witnesses to months-old events, and they

are not material to the questions as to whether the contacts were proper.

Let me summarize the main points of this chronology. The contacts generally fall into three time periods. The first set of contacts occurred in the fall of 1993. They began on September 29 when Treasury General Counsel Jean Hanson took White House Counsel Bernard Nussbaum aside at the end of a meeting on another subject and told him that President and Mrs. Clinton were mentioned incidentally in an RTC criminal referral concerning Madison Guaranty.

Ms. Hanson indicated to Mr. Nussbaum that the referral was likely to be the subject of press leaks and inquiries. She said she was informing Mr. Nussbaum so that the White House would not be taken by surprise. Mr. Nussbaum asked Ms. Hanson to be in touch with his staff if there were further press developments. Over the next few weeks Ms. Hanson spoke on a couple of occasions to lawyers on the Office of the White House counsel to report the details of continuing press inquiries.

Intensifying press interest in the referrals apparently led Mr. Jack DeVore, then Treasury's Assistant Secretary for Public Affairs, to arrange a meeting with White House communications and legal staff to discuss Treasury's response to the press. This meeting occurred on October 14. As far as I have been able to determine, no White House official took any action based on the information received about the referrals other than preparing to respond to press inquiries.

A second set of contacts occurred because of the then-impending expiration on February 28, 1994, of the statute of limitations for the RTC to file certain potential civil claims arising out of the failure of Madison Guaranty.

As you may recall, Senator D'Amato was reminding the Senate daily of the shrinking period during which certain possible civil claims related to the Madison Guaranty failure could be pursued by the RTC. And RTC officials had already provided a briefing on this subject to members of Senator D'Amato's staff on January 24.

Mr. Roger Altman, the Deputy Secretary of the Treasury and the Acting CEO of the RTC at that time, sought a meeting with White House officials on February 2 to provide a similar briefing to the White House. Ms. Hanson accompanied Mr. Altman to the meeting. Using talking points prepared by Ms. Hanson, Mr. Altman described the various procedural options available to the RTC for preserving potential claims when the expiration of the statute of limitations was imminent.

At the same meeting Mr. Altman also raised the issue of his possible recusal from decisions on how to proceed with respect to possible Madison-related claims potentially involving President and Mrs. Clinton. I will refer to this issue in greater detail later in this statement.

The third set of contacts relates to the RTC Oversight Board hearing before the Senate Banking Committee on February 24. By that time, Congress had already passed and the President had promptly signed a law extending the statute of limitations on potential RTC civil claims until December 31, 1995, or when the RTC was wound up, whichever came later.

At the hearing, in response to questions about contacts with the White House related to the Madison matter, Mr. Altman did not mention that he had raised the question of his possible recusal at the February 2 meeting.

Mr. Altman also did not mention the September 29 and October 14 meetings regarding press inquiries about criminal referrals.

Following the hearing, lawyers from the Office of the White House counsel and other White House staff met to determine whether Mr. Altman's hearing testimony might require supplementation. As a result, White House staff Secretary John Podesta telephoned Mr. Altman and expressed concern with Mr. Altman's omission of the fall meetings and of his possible recusal as the subject of discussion at the February 2 meeting.

The day after the hearing, the *New York Times* published a story about White House and Treasury meetings on the Madison investigation. That afternoon, Mr. Joshua Steiner, the Treasury Chief of Staff, reported to Mr. Podesta of the White House staff that Mr. Altman had just informed an editor of the *New York Times* that he had decided to recuse.

This news took several at the White House by surprise and led to a series of telephone calls, which I will also refer to later in this statement.

Let me turn next to the standards of ethical conduct. The ethical rules applicable to executive branch employees are set forth in the Standards of Ethical Conduct issued by the nonpartisan Office of Government Ethics. Three of the standards might arguably be relevant to the Treasury-White House contacts.

First, a standard of conduct provides that an employee shall not participate in a matter without the prior authorization of the designated ethics official if the employee, quote, "determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter."

There are two reasons why this standard was not violated, in my view. First, in connection with the vast majority of the contacts, no White House official did anything that could be regarded as, quote, "participating," unquote, in the Madison Guaranty matter before the RTC, or in any other Madison Guaranty matter affecting his or her own personal interests or those of anyone else.

Second, whether there may be an appearance of partiality depends in part on whether the employee has certain types of private relationships with persons interested in the matter at issue. President and Mrs. Clinton were arguably interested in some RTC actions concerning Madison Guaranty. But on the basis of my review, none of the White House staff members involved in the contacts has any of the types of financial or family relationships with President or Mrs. Clinton that would raise the issue of partiality.

It is not partiality, for example, for Presidential aides to receive information or express opinions related to the interests of the President for whom they work. As an example, a White House staff member could properly receive information or express opinions about a congressional proposal to raise or lower the salary of the President without violating this standard. And there is no other evidence to show that a question concerning the impartiality of any of the staff members should reasonably have arisen.

Second, under the standards, an executive branch employee may not use his public office for the private gain of himself or his close friend, relative, or private business associate. Stated in a slightly different way, as these regulations provide, he may not use his government position, quote, "in a manner that is intended to coerce or induce another person to provide any benefit, financial or otherwise," to himself or his close friend, relative, or private business associate.

On the basis of my review, none of the staff members involved in the contacts sought private gain for himself or anyone else covered by the standard.

Third, executive branch employees may not use nonpublic information to further their own private interests or those of anyone else whatever their relationship with the person. No White House staff member attempted to further anyone's private interests with any nonpublic information from the Treasury.

Now, two main ethical issues arise with respect to these events. The first is whether it violated any ethical standard, or was otherwise inappropriate, for the White House to receive a "heads-up" from a Treasury official that the RTC was making criminal referrals that made incidental mention of the President and Mrs. Clinton, and thereafter for Treasury and White House officials to discuss how to respond to press leaks and queries about the matter.

The second issue relates to whether it violated any such standard, or was otherwise inappropriate, when Mr. Altman told White House officials he was considering whether he should recuse himself from participation in any Madison Guaranty matter, for White House officials to have given Mr. Altman their views about this subject.

To put these questions of propriety in perspective, one must consider the constitutional structure of the executive branch. The Constitution, as you know, vests the entire executive power in the President alone. Congress has passed various laws redistributing that power within and outside the executive branch, such as the laws purporting to vest power in various Cabinet Secretaries, the laws creating various fully independent agencies like the Federal Reserve Board and the Federal Communications Commission, and the recently revived law creating the Office of Independent Counsel. But the Department of the Treasury remains wholly within the executive branch, and the RTC, in my view, is not a fully independent agency in the same sense as the Federal Reserve and the FCC. The RTC acts under the general direction of a chief executive appointed by and serving at the pleasure of the President, and under the general supervision of an oversight board which includes the Secretary of the Treasury and a number of other executive branch officials directly or indirectly answerable to the President. In my view, the RTC, like the Environmental Protection Agency, should be regarded as an independent agency within the executive branch.

Of course, the constitutional role of the President as the sole holder of the executive power does not mean that he or the White House can properly seek to influence executive branch law enforcement investigations involving other high government officials or the President himself. One reason we have an independent counsel law is to prevent this from happening. It would, of course, be inap-

appropriate for the White House to try to influence investigations under that law. But it is entirely appropriate for the White House to receive a heads-up promptly after the Attorney General makes a decision to seek the appointment of an independent counsel so that the White House will not be surprised by press questions. That has been the practice followed ever since the independent counsel law was enacted in 1977.

The same principles apply when high officials are directly or indirectly involved in law enforcement investigations within the jurisdiction of other executive branch agencies, such as the EPA, the Food and Drug Administration, and the RTC. Strictly speaking, I suppose, the RTC is not a law enforcement agency, but it can, as it has here, make criminal referrals to the Department of Justice, and it can bring civil actions against directors, officers, and borrowers when failed savings and loans are taken over by the government.

The heads-up principle applies with particular force to criminal referrals by the RTC or other agencies to the Department of Justice. Because of their preliminary nature, it is the usual practice, in fairness to those involved, not to make a public announcement that such a referral has been made. I understand that the RTC and the FDIC have made more than 1,000 criminal referrals to the Department of Justice, of which only a small percentage have been found meritorious enough to warrant an actual criminal prosecution.

The heads-up received by the White House that the RTC was making criminal referrals concerning Madison Guaranty did not, in my opinion, involve any impropriety or breach of any ethical standard by any White House official. None of them made any effort to influence the RTC's decision.

And on the same reasoning, there was no impropriety or breach of any ethical standard in the meeting requested by Treasury officials and held on October 14, 1993, to discuss press leaks and inquiries to the Treasury concerning the unannounced criminal referrals and the responses to be made to these inquiries. It was obviously important and appropriate for the Treasury to inform the White House about the leaks and resulting press queries, so that the White House could prepare itself and brief the Treasury to answer the questions being raised by the press concerning President and Mrs. Clinton's investment in Whitewater and their knowledge as to the campaign contributions raised by Mr. McDougal. In my opinion, those who participated acted in entire good faith and in compliance with existing ethical standards.

The Office of Government Ethics, the agency charged with interpreting and applying the Standards of Conduct, agrees that the receipt of such information by White House officials, if not then used to further their own or another's private interests, does not violate the standards; and on the basis of my review, the information was not used for any such purpose.

Mr. Chairman, I don't know how long you want to continue before the Joint Session, but I am prepared to go on if you would like me to.

The CHAIRMAN. I believe it would be proper to allow you to use your judgment. If you want to proceed to the completion, if it is

possible, by 11 o'clock, and if not, maybe by the time we reach 11 o'clock, if you could sum up so that when we return after the recess, we would then be prepared——

Mr. CUTLER. I could certainly complete before 11; the question was whether you had to leave in time to be there for the Joint Session.

The CHAIRMAN. I believe that will be fine.

Mr. CUTLER. All right.

The CHAIRMAN. It begins at 11. I don't think the members will have any trouble getting in at 11. But some of the members have mentioned that in order to make the proper arrangements to get over there, it would be all right to leave a few minutes before 11, so let's say 10 minutes of 11.

Mr. CUTLER. Let me go on then and try to move ahead.

The CHAIRMAN. Yes, sir.

Mr. CUTLER. Let me now come to the more difficult issue of the contacts about the statute of limitations and Mr. Altman's consideration of his possible recusal starting with the meeting on February 2. Under the RTC statute, its Chief Executive is appointed by the President by and with the advice and consent of the Senate. In March 1993, pending the selection of a nominee, the President had named Deputy Secretary Roger Altman to serve simultaneously as Acting Chief Executive of the RTC. Under the applicable law, Mr. Altman could only serve as Acting Chief Executive for a maximum of 120 days; that is, expiring in July 1993, unless by that time a nomination had been sent to the Senate for its advice and consent, in which case he could continue until the nominee took office. In July 1993, before the 120 days expired, the President nominated Stanley Tate to the RTC post, but he ran into confirmation problems and withdrew on November 30. As a result, Mr. Altman was legally authorized to continue as Acting Chief Executive for 120 additional days after November 30; that is, to March 30, 1994.

In January 1994, there was increasing congressional interest in the status of potential civil claims relating to Madison Guaranty and Whitewater. At that time, the relevant statute of limitations on such claims was to expire on February 28, 1994, and the RTC had not yet decided whether civil claims relating to Madison Guaranty should be brought. At a meeting requested by Mr. Altman and held with White House staff members on February 2, Mr. Altman briefed the White House staff on the procedural options available to the RTC in potential cases such as Madison Guaranty where the statute of limitations was about to expire, just as the RTC had previously briefed an interested Member of Congress who had inquired about the same situation.

At this meeting, Mr. Altman also said he had been considering recusal from participation in any RTC decisions concerning Madison Guaranty and that he had been advised to recuse by his Treasury colleagues. There is a difference of recollection among the participants as to whether Mr. Altman said he had already decided to recuse, or whether he said he was still considering the matter. There is no evidence that the White House people who were there knew before the meeting started that Mr. Altman would raise the issue of recusal.

Mr. Bernard Nussbaum, then the White House counsel, expressed his concern, partly because a similar question had just been raised in the then pending confirmation hearings of Ms. Ricki Tigert, President Clinton's nominee for Chairman of the FDIC. In her hearing on February 1, the day before this meeting, Ms. Tigert had been asked to make a blanket recusal in any matter potentially involving President Clinton. She had replied that she would defer any decision on recusal until a particular matter came before her and would then follow the advice of the FDIC ethics officer.

Mr. Nussbaum understood Mr. Altman to say that he had been advised he had no—he, Mr. Altman, had no legal or ethical obligation to recuse, but was inclined to do so anyway. Mr. Nussbaum was convinced that an Altman recusal, in the absence of a legal or ethical requirement to do so, might undercut the position taken by Ms. Tigert. Mr. Nussbaum expressed his view that a Presidential appointee solely because of his or her status as such, should not recuse merely because the matter tangentially involved the President. Although Mr. Altman said he would leave any Madison Guaranty decision to RTC's career officers in any event, Mr. Nussbaum said he thought these officers could be expected to act with greater fairness and professionalism if Mr. Altman did not recuse. Mr. Nussbaum also made clear that the final decision on recusal was Mr. Altman's to make.

On February 3, the day after the meeting, Mr. Altman advised the White House that he had decided not to recuse for the time being. He maintained that position until February 25, a day after his testimony before the Senate Banking Committee, when he announced his recusal. As you know, the Office of Government Ethics had concurred with the determination of the Treasury and RTC ethics officials in February 1994 that Mr. Altman had no legal obligation to recuse himself from Madison Guaranty matters, and that a decision on whether or not to recuse lay within his personal discretion. The Office of Government Ethics has now also informally confirmed to us that it has no reason to believe that any White House official violated any ethical standard with respect to the recusal issue.

However, in my view, Mr. Nussbaum's statements plainly suggested his preference that Mr. Altman not recuse himself in the circumstances and Mr. Altman may have so understood him. This may have influenced Mr. Altman's decision on February 3 to defer recusal. Even though this did not, in my opinion, violate any ethical standard, there is a broader question as to whether it was appropriate for any White House staff member to make this preference known to Mr. Altman.

Now, the answer to that question naturally seems clearer when viewed in hindsight than it may have appeared to be at the time. I am sure that everyone concerned acted in complete good faith. But in my judgment, this discussion should not have taken place. And once the question was raised, I believe that in the light of all of the factual and political circumstances relating to Madison Guaranty and Whitewater, the White House should have encouraged Mr. Altman to recuse.

However, it is important to note that during the period before Mr. Altman recused himself, Mr. Altman did not participate in the

RTC decision to make the criminal referrals or any other RTC decision relating to a particular Madison Guaranty/Whitewater matter.

Let me turn briefly to whether it violated any ethical standard for White House officials to receive the February 2 briefing as to RTC's statute of limitations options. This same briefing was being given to various Members of Congress, and was public information. It was in the nature of a heads-up to the White House, and no White House participant said anything that could have affected how the RTC might exercise its options. Moreover, that issue itself was mooted 10 days later when Congress passed and the President promptly signed the law extending the limitation period until December 31, 1995, or the winding up of the RTC, whichever comes later. There was no discussion of the merits or substance of any possible claims relating to Madison Guaranty.

Now, there remain the contacts that occurred on February 25, after Mr. Altman's testimony on February 24 and after he announced his decision to recuse on February 25. In the course of a telephone conversation initiated by Mr. George Stephanopoulos, Senior Advisor to the President, and Mr. Harold Ickes, the White House Deputy Chief of Staff, with Mr. Altman, they expressed their concern that Mr. Altman had informed the *New York Times* of his recusal decision before informing the White House. However, they made no effort to persuade Mr. Altman to change his mind. In this conversation, they also expressed their surprise and dismay about reports that the RTC had retained Mr. Jay Stephens and his law firm to investigate and conduct any civil litigation on behalf of the RTC relating to the same allegations as the criminal referrals. And let me remind you that when Attorney General Janet Reno had replaced Mr. Stephens and other holdover U.S. attorneys early in the Clinton administration, Mr. Stephens had strongly criticized the administration and had later considered running as a Republican candidate for the Senate. It is no exaggeration to say that he was a vocal political critic of the President.

In an earlier conversation the same day between Mr. Stephanopoulos and Mr. Joshua Steiner, Secretary Bentsen's Chief of Staff, Mr. Stephanopoulos had also expressed these concerns and questioned how Mr. Stephens could have been considered impartial and suitable for appointment. Mr. Steiner responded that it was a done deal and should not be pursued further, and it was not.

In my view, the concerns expressed by Mr. Stephanopoulos and Mr. Ickes were perfectly natural under the circumstances and involved no ethical impropriety. They made no real effort to alter what had been done, and with respect to Mr. Stephens, Mr. Stephanopoulos was simply "letting off steam." Republican observers like Mr. Marlin Fitzwater, President Bush's press secretary, and Congressman James Leach, I believe, have also dismissed the incident as trivial. As in the case of the earlier contacts, the contacts concerning the retention of Mr. Stephens had no effect on his status or on the RTC's activities concerning Madison Guaranty.

Let me turn to when the President and Mrs. Clinton learned about the Treasury-White House contacts. Mr. Lindsey informed the President of the criminal referrals early in October, shortly after the initial "heads-up" from Ms. Hanson and after the press

had begun inquiring into the matter. Mrs. Clinton learned about it later in October through press reports.

The President and Mrs. Clinton do not recall learning about the discussions concerning Mr. Altman's recusal until Mr. Altman announced it on February 25. Mr. Ickes recalls that at some point he briefly informed the President of the February 2 meeting, and Mr. Altman's subsequent decision not to recuse. He does not recall when that discussion took place. Mr. Ickes also recalls a similar brief discussion with Mrs. Clinton.

Now, I also want to refer briefly to the brief conversation between the President and Comptroller of the Currency, Eugene Ludwig, on December 30, 1993, which, in my view, does not even deserve to be described as a contact. They were both at Renaissance Weekend in Hilton Head, along with more than 1,000 others. They had a brief exchange. Their recollections differ somewhat, but they agree the President said he wanted to have a further talk with Mr. Ludwig about the Madison Guaranty/Whitewater matter, which was then very much in the news. Mr. Ludwig called Jean Hanson, the Treasury general counsel, for guidance; and she referred him to the White House Counsel's Office, where he reached Mr. Clifford Sloan.

Mr. Sloan called another White House lawyer, who called Deputy White House Counsel Joel Klein, sitting behind me, who was also at Renaissance Weekend. Mr. Klein found the President and inquired about the conversation. The President said he had only wanted to get Mr. Ludwig's suggestions as to the names of experts familiar with real estate development and finance who might be willing to write articles explaining the Whitewater project to the public. Mr. Klein said it would be better to obtain such advice from someone other than the Comptroller. The President said he agreed, and would turn elsewhere; and Mr. Klein so informed Mr. Ludwig.

And since the President and Mr. Ludwig never had a substantive conversation even about the names of experts who could write articles, their brief encounter is hardly worth mentioning.

Mr. Chairman, I have said that while the various Treasury-White House contacts violated no ethical standard, in my judgment, it would have been better if some of these contacts had never occurred, and if fewer White House staff members had participated. When I reviewed these incidents in their totality, I found that there were too many people having too many discussions about too many sensitive matters, matters which were properly the province of the Office of the White House Counsel. Contacts, in my view, were not sufficiently channeled between White House counsel and Treasury counsel, and there were too many conversations in which no counsel participated.

In retrospect, I believe we did not meet as high a performance standard as we should have set for ourselves. We have, therefore, taken additional measures to assure that future contacts between the White House and executive branch agencies with law enforcement functions will be beyond reasonable challenge.

The CHAIRMAN. Mr. Cutler, will you yield to me at this point? It is about 10 minutes of 11, so if you are agreeable, why don't we allow you to continue when we return from the recess?

Now, I am suggesting that we recess for the Joint Session and return and resume at 1 p.m. Is there any objection to that?

If not, we will recess until 1 p.m.

Mr. CUTLER. Thank you, Mr. Chairman.

[Recess.]

The CHAIRMAN. The committee will please come to order.

Mr. Mfume, did you seek recognition?

Mr. MFUME. I do, briefly, Mr. Chairman. On behalf of myself, Ms. Waters, Mr. Flake, Mr. Rush, Mr. Wynn, Mr. Fields, and Mr. Watt, let me express our thanks to the Chair for allowing us the ability to be a part of a meeting at the White House today, even though this hearing was going on; and then to announce that we appreciate it. All of us have since returned from that meeting, Mr. Chairman, and are looking forward to the continuation of this one.

The CHAIRMAN. I thank you very much. If Mr. Cutler will further yield to me, we have just been handed the reply by the Speaker to my inquiry of July 21 in which I asked for clarification of the leadership agreement with respect to specifically the abidance and the sustained abidance respecting the counsel's investigation, as well as that aspect of the deceased Vincent Foster. So I would like to place that in the record, and just summarize by reading the last paragraph.

"Mr. Fiske has now told you that, contrary to his earlier expectations, his review of the handling of Mr. Vincent Foster's official and personal papers is not yet concluded. It is perfectly clear to me that the bipartisan agreement must be read to preclude inquiry by the committee into this aspect of Mr. Fiske's investigation until Mr. Fiske has in fact concluded that aspect of the investigation.

"Mr. Fiske's earlier prediction was inaccurate, but that in no way alters the underlying principles of the bipartisan agreement that your committee's hearing should be structured and sequenced so that they will not interfere with the ongoing investigation of the special counsel, Robert B. Fiske," end of paragraph, and I offer that for the record.

Mr. Cutler, you are now recognized to continue.

Mr. CUTLER. Thank you, Mr. Chairman. I have only a few points left to make, and for the sake of continuity and context, I am going to go back not to the beginning, but just one paragraph that I had read just before we recessed.

Mr. Chairman, I have said that while the various Treasury-White House contacts violated no ethical standard, in my judgment it would have been better if some of these contacts had never occurred, and if fewer White House staff members had participated. When I reviewed these incidents in their totality, I found that there were too many people having too many discussions about too many sensitive matters, matters which were properly the province of only the White House counsel. The contacts were not sufficiently channeled between White House counsel and Treasury counsel, and there were too many conversations in which no counsel participated. In retrospect, I believe we did not meet as high a performance standard as we should have set for ourselves. We have, therefore, taken additional measures to assure that future contacts between the White House and executive branch agencies with law enforcement functions will be beyond reasonable challenge.

First, in March 1994, we reminded everyone on the White House staff of the rule that no such contacts relating to a particular law enforcement investigation may be initiated without the prior approval of the White House counsel. Some of the Treasury-White House contacts that I have described were initiated or permitted by White House staff members without the prior approval of the counsel, even though counsel's memoranda requiring prior approval have been in effect since February 1993.

Second, as a result of my review, we have concluded that such contacts by staff members other than those in the White House Counsel's Office are inadvisable, even should the White House counsel approve them, and that in the future, all such contacts should be solely between White House counsel or deputy and the general counsel or deputy of the agency involved. These are the understandings we have for some time had in place with the Attorney General and her Deputy, and we plan to extend them to other agencies with law enforcement responsibilities as well.

Third, we are drafting rules of conduct for future contacts between the Office of the White House counsel and executive branch agencies with law enforcement functions on particular investigative matters, defining the circumstances under which such contacts are appropriate and when they are not. We will review these drafts with the agencies and we plan to issue them promptly.

Finally, I want to point out again that none of the Treasury-White House contacts I have described have had the slightest effect on the RTC's activities concerning Madison Guaranty to date and pledge that no such effects will be tolerated in the future.

Now, Mr. Chairman, I had included a paragraph or two on Independent counsel Fiske's report on Mr. Vincent Foster's death in my prepared statement, but in the light of your ruling, I am going to omit reading those now.

I do want to thank you, Mr. Chairman and Mr. Leach, for your very fair and sensitive remarks about pursuing the matter of Mr. Foster's suicide any further, and I certainly agree with the sentiment that it is now, at long last, time to leave Mr. Foster's family in peace.

That concludes my statement. I thank you, Mr. Chairman.

[The statement of Mr. Cutler can be found in the appendix.]

The CHAIRMAN. Thank you, sir.

There are two basic questions I want to ask now. And I must make reference to some statements that have been made. In the floor statement, House floor statement in March, Mr. Leach made some comments about the ethical propriety of the White House contacts. His words, "As in most serious public scandals, coverup can prove as troubling as the crime. Seldom have public and private ethics of lawyers in the White House and executive branch departments and agencies been so thoroughly devalued."

Now, my two-part question to that is, was there a coverup to conceal the White House role in the monitoring of certain aspects of the Madison investigation at the RTC; and second, have the public and private ethics of White House lawyers been devalued?

Mr. CUTLER. I have certainly found no evidence of any attempt to cover up anything at all. I have found no evidence of any attempt to influence what the RTC was doing, and certainly no influ-

ence occurred. The RTC did exactly what it was going to do anyway.

With respect to the comments about White House lawyers, I can only speak for myself, but I will say on behalf of every member of the White House legal staff I have met, including Mr. Nussbaum, I have the highest respect for their integrity, their character, and their belief that they were doing what was right in the interests of the United States.

The CHAIRMAN. The minority on this committee have complained to their leadership that the White House has been less than forthcoming with documents, making staff available for interviews, and providing witnesses. I know that during the committee's BNL investigation, the previous administration refused documents and also at one point or another in the process intervened with executive privilege.

Now, has the President provided all documents requested by the committee?

Mr. CUTLER. The President has provided all documents requested by this committee. That is correct.

The CHAIRMAN. Did the White House offer to let the minority, the Republicans, review redacted information?

Mr. CUTLER. Did the White House offer to let the minority review—

The CHAIRMAN. The minority, the Republicans, review redacted information?

Mr. CUTLER. We have redacted papers that we have produced to eliminate portions of those papers that are not responsive to the committee's requests and have nothing to do with the "contacts" issue. For example, telephone records, reports by one White House official to another about a series of events, one of which may relate to Madison Guaranty/Whitewater. We have not redacted anything relevant to the committee's inquiries; and I would like to add that as a lawyer who has been in the business of producing documents to other lawyers for a good 50 years, this is the first time that any other lawyer has ever questioned whether the production of redacted documents under my supervision has been unethical.

The CHAIRMAN. Did the President allow staff interviews?

Mr. CUTLER. Did the President allow staff interviews? Yes, he did. He has allowed an interview of everyone requested by either the majority or the minority counsel of the committee.

The CHAIRMAN. Will the President allow his staff to testify before this committee on Thursday?

Mr. CUTLER. Absolutely, and they will.

The CHAIRMAN. Would you call the President's cooperation unprecedented?

Mr. CUTLER. We think it has been as complete as that of any previous President. I would say it goes far beyond what most Presidents have done.

The CHAIRMAN. Let me add to that that as long as I have been a Member of the Congress, 32 years and 7 months, I have yet to see a President do what this one has done, and not even raise or interpose a question of executive privilege. I think that ought to be a matter of note.

With that, I will have questions I will submit in writing that can be answered for the record; and I recognize Mr. Leach.

[The information referred to can be found in the appendix.]

Mr. LEACH. Thank you, Mr. Chairman. Let me just say a perspective is difficult to apply to events of the day. Today, of generational significance is the step toward peace in the Middle East that has been taken. The minority congratulates the President and is proud of the bipartisan tradition of American foreign policy in the Middle East.

Today, as well, a very narrow aspect of a particular probe has commenced. It amounts in some ways to much ado about a very small aspect of a very modest scandal. On the other hand, there is some significance. Part of the significance relates to what is off the table, and what is off the table is any discussion of that part of the scandal called Whitewater. What is on the table is a discussion of contacts between the White House and the Treasury and the RTC.

The resolution that this committee is operating under called for a three-part probe—one of the Foster suicide, one of contacts just mentioned, one of the handling of the Foster office papers. The first has been taken off the table by the majority this morning. The third was taken off the table by the majority prior to this morning, and so we are left with one-third of 5 percent of the Whitewater circumstance; we are down to about 1 percent. And so if one is wondering whether we have a very extensive probe of a very small aspect of this issue, the answer to that is very much in the affirmative.

However, this 1 percent is not totally trivial, because what is at issue is whether or not our government operates with complete candor, and whether or not any individual is above the law or is privileged before the law. That is, more than anything else, what is at issue. The context of the development of these referrals is something that has not been well established, and the effect of what happened when these referrals were mentioned to the White House has also not been well established.

The counsel of the White House has stated that there has been nothing unethical that occurred in the White House itself. But it is interesting when the first referrals were mentioned at the White House on September 29, they were in the process of being developed. Immediately thereafter, the Legal Division of the RTC, in an unprecedented action, presented a paper objecting to the referrals. That is immediately in the wake of the White House meeting.

I would like to ask you, Mr. Cutler, did you interview any of the people that White House counsel talked with, and then did you try to find out if any actions then occurred?

Mr. CUTLER. Well, Mr. Leach, first, I want to respond to your opening comments, if I can.

It is quite true that two-thirds of the three subjects have, for the moment, been taken off the table. But remember how the remaining one-third has been reduced in the level of original charges and national expectations. This subject of White House contacts was originally brought to public attention in newspaper and magazine stories and talks by Members of Congress suggesting that there had been an obstruction of justice, a criminal obstruction of justice,

a criminal lying to Congress, a spectacle of White House and Treasury people going to jail. All of that is off the table. Those expectations have been reduced by Mr. Fiske's very objective and thorough study.

We are now down to, were there violations of noncriminal ethical standards, and if there were not violations of noncriminal ethical standards, were there other things one might call inappropriate? I have been very frank about what I regard not as a violation of any ethical standard, but as something that might be thought of as inappropriate.

Let me be very categorical with you. I know of no contact by anyone at the White House with any career official at the RTC other than one press call from an RTC press officer to, I believe, Ms. Lisa Caputo, the press officer for Mrs. Clinton, which was so trivial that I don't think either of them has any great memory of what it is.

There were no such contacts. I know of no contacts that had any effect or were intended to have any effect on Madison Guaranty-Whitewater matters between the Treasury political appointees of the President and the RTC; and I understand that the counsel of the RTC in Washington, who you say was raising questions about the Little Rock recommendations, is a career officer known as a very tough prosecutor and lawyer.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Neal.

Mr. CUTLER. And I might add that she says she felt no pressure whatsoever. That is her testimony to the Treasury inspector general.

Mr. NEAL. Thank you, Mr. Chairman.

Mr. Chairman, this morning our colleague, Mr. Leach, delivered a very mixed message in his opening statement. He said on the one hand that we received no evidence of any violation of law and that all of this doesn't amount to much. On the other hand, he suggested numerous horrible, dark, nefarious activities, and other leading Republican spokesmen are even more explicit in charging horrible crime. So what is the truth as we know it so far?

Now, that is the purpose of our hearing. Have laws been broken? Have ethics standards been violated? Have investigations been canceled or interfered with? Are our hearings too limited?

I am going to ask our witness, Mr. Cutler, please, if you will, just give me a yes or no answer to these next two or three questions, because I only have about 5 minutes.

First, isn't it true that Mr. Robert Fiske, Jr., the Republican special prosecutor, a man who was appointed by a Republican President as a U.S. attorney, who was nominated by President Bush as Deputy Attorney General, who has donated thousands of dollars to Republican candidates, a man praised for his integrity by Mr. Leach, Senator D'Amato, and others, is spending millions of dollars investigating the matter before us and has found no violation of law?

Mr. CUTLER. That is correct.

Mr. NEAL. Isn't it also true that you, Mr. Cutler, a man who has served both Republican and Democratic Presidents, you who was named to a Commission on Government Ethics by President Bush, who has been brought in from the outside of this administration to

determine if there have been any violations of government ethical standards, have found no violations?

Mr. CUTLER. That is correct.

Mr. NEAL. Now, regarding the question of our hearing, I am going to quote roughly from the House of Representatives Resolution which set the terms of our hearing responsibility. It says our hearings should be structured in such a manner that they would not interfere with the ongoing investigation of Special Counsel Robert Fiske, Jr. He has indicated that if we go beyond what we are doing, we could jeopardize his investigation.

All but 15 Congressmen voted for this resolution, including Mr. Leach and the overwhelming majority of our colleagues on this committee. So clearly, our hearings are appropriate. If we go further, we jeopardize his investigation.

Now, Mr. Chairman, what we have learned so far is that there has been no violation of law, no violation of ethical standards, no investigations interfered with, no coverup, and our hearings are as complete as they can be at this time.

Mr. Chairman, we are left to conclude that widely reported Republican charges of criminal and unethical behavior are totally without merit and totally politically motivated. This is a totally politically motivated sideshow.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. McCollum.

Mr. MCCOLLUM. Thank you very much, Mr. Chairman.

Mr. Cutler, I find that this whole hearing process very interesting, having been, I guess, the only member of this panel who served on the Iran-Contra hearings, and seeing the delicacy with which we are treating Mr. Fiske and the way that we are going about this process. I guess we're doing this in reaction to Oliver North's ability to get some satisfaction on appeal, and all of that came about because we granted immunity over there to witnesses.

We never suggested that over here, and I frankly think we are timidly tiptoeing through the tulips on this one. But, nonetheless, we are abiding by that, and I want to commend you as I would have expected you to be today—to be a very adroit person representing your client. You have put the best face possible on this matter today, as far as I can determine, and that is what you are supposed to do when you represent your client, who is the President of the United States.

But some of us see the facts a little bit differently, just based upon what is out here today. One of the things I see differently is the lack of appreciation on the part of the President and seemingly a number of White House staff members about avoiding even the appearance of impropriety when you are the President or when you are in the White House and when you have that responsibility. I know that term is applied often to judges. But, certainly, we should have at least a sense of that in the part of our President and on the part of the chief advisors to that President. I think you have that, but I am not at all confident that many of the people whom you are representing or who have in the past been involved with this matter before us have that sense of need to avoid that appearance of impropriety.

There also seems to be a pattern that develops here. It is not just in the context of this limited Whitewater glimpse of contacts between Treasury and the White House that we see this appearance of impropriety and maybe impropriety. We saw it in Travelgate, which apparently led to several of the actions you will hear in the next few days some of these White House folks took or didn't take.

Key staffers in that case ignored the ethics code in firing travel office folks, they removed documents, they made improper contacts with the FBI, and so on. It sounds very similar to what we saw here, even though maybe slightly more subdued in this particular case.

In the health care area, there was a tendency to stretch the truth, to say the least, about the composition of the White House's Health Care Task Force at the beginning to the public; and there certainly has been a misleading to the public about the First Family's financial records, the security status of White House employees, the removal of documents from Mr. Foster's office that we aren't going to get into here today.

I would like also to point out a couple of other things. You say in your testimony that the people who are involved in this were impartial, there is no standard of conduct that has been breached. But I don't see how, for one—looking at the standard of conduct, how anyone can say that a White House staffer can be expected to be impartial when the President whom he serves is possibly reflected upon in potential criminal matters as was the case facing those who were looking at this from a White House perspective.

I also am concerned about your giving propriety to the heads-up issue here in this case. The President had the proper right to know that, at least through the counsel involved. I dare say that the mayor of a major city named in a criminal reference from RTC or the Environmental Protection Agency or some other government agency would not get a heads-up with regard to their being involved potentially in this before the matter was ever considered any further than it has been here.

The problem is, there is this cozy relationship. Part of it is natural, that deals with the Presidency, but that makes it all the more important that the President and his staff do more even than you have indicated you believe is necessary.

And last, but not least, and it comes to a point in the question I would like to ask you about, you have made not just today, but on television a number of times, the statement, and I quote today, "None of the Treasury-White House contacts I have described had the slightest effect on RTC's activities concerning Madison Guaranty."

Mr. Cutler, in my observation of this, and I am going to ask a question about it, isn't it true that, first of all, while there may not have been the direct contact between Mr. Altman and anybody down there in Kansas City, and even though we are not getting into that today, that on a very—there is a very sense of some feeling that comes out of these sorts of things when you have the power of the Presidency there, when you have the very chief counsel in this case of RTC who is down on the very day, February 22, when Mr. Altman is meeting with Mr. Nussbaum and other White House people, this April Breslaw, an RTC attorney in Kansas City

telling the chief investigator, Jean Lewis, that higher ups would like to say Whitewater did not cause any losses, and later Ms. Lewis is let go.

I would suggest—I would ask you, isn't there at least a sense of some connection that is involved here, and in addition to that, I would like to ask you with respect to Mr. Lindsey's contact, it seems to me that Mr. Lindsey made contact after one of these meetings, called down to Arkansas to find out about some of these things after one of these meetings. There is a memo dated October 20 that I have in my hands as part of our file records here from Mr. Lindsey, to the file, in which he discusses that fact and he says that he made a contact and a call after one of these meetings with the Treasury Department.

Have you had a chance to examine that document?

The CHAIRMAN. The time of the gentleman has expired, and the Chair will say to the witness that he may answer for the record.

Mr. CUTLER. Thank you very much.

The CHAIRMAN. Each member is going to have to be the judge of how he wants to direct the questions. If a member decides to monopolize his time with statements and conclusions, that is his business, but time has expired.

Mr. LaFalce.

Mr. MCCOLLUM. Point of order, Mr. Chairman.

Mr. CUTLER. Am I limited to an answer for the record? Mr. McCollum didn't even ask his question until the 5 minutes were up.

The CHAIRMAN. If the witness feels he can answer an unstated question, the gentleman will be recognized.

Mr. MCCOLLUM. I don't want to be impolite to Mr. Cutler.

Mr. CUTLER. Let me start from the back. You asked about Mr. Lindsey checking to respond to press queries as to who endorsed the Madison Guaranty checks that were part of the campaign contributions to Mr. Clinton's gubernatorial campaign. That was the press question. Only the Clinton campaign people would know about that.

Mr. Lindsey was trying to get the answer to the question. It seems to me that is certainly beyond any criticism. You referred to Ms. Lewis and the questions she received from April Breslaw in Washington. Ms. Kulka has said she is the top career government attorney in the RTC. She has said she felt no pressure at all from any of the political appointees in the Treasury Department, people appointed by President Clinton. She was allowed to make her own decisions exactly as she made them.

You referred to the appearance of impropriety. Remember that this administration adopted a 5-year contractual rule for postemployment contacts as compared to the 2-year rule, 1- and 2-year rules on the statute books.

This administration favored the extension of the independent counsel law, which I have no doubt you, perhaps, Mr. McCollum, and most of the Republicans opposed. You prevented the independent counsel law from being continued at the end of 1992.

Mr. MCCOLLUM. Mr. Chairman, point of order.

Mr. Cutler, I did not oppose continuing the independent counsel law.

Mr. CUTLER. Most of your party did, I believe.

Mr. MCCOLLUM. I don't believe that is true either, Mr. Cutler.

Mr. CUTLER. I am not here as a special pleader for the President of the United States. I am here to report to you about a factual investigation that I conducted. I didn't ask for this job. I came in and I took it, and I reported frankly to the best of my ability as a lawyer and a person of integrity.

Mr. MCCOLLUM. Mr. Chairman, parliamentary inquiry. Mr. Chairman, would it be appropriate at this time to move that the committee remove all the restrictions and limitations on documents and records in the possession of the officials of the Treasury Department and the Resolution Trust Corporation related to Madison Guaranty Savings and Loan and Whitewater Development Corp., with due regard for the redaction in appropriate instances to protect individuals whose conduct is not the subject of this inquiry?

The CHAIRMAN. I don't think it would be proper at this time to move into that since we are operating under and honor bound to respect the confidentiality, which up to now I am happy to say the committee has done diligent work, both staffs have agreed and have undertaken to assume a responsibility of confidentiality. I think this is hardly the place for it.

Mr. MCCOLLUM. Mr. Chairman, is there an appropriate time during this hearing?

Mr. VENTO. Regular order, Mr. Chairman.

Mr. MCCOLLUM. Otherwise, I would appeal the ruling of the Chair, if there is not a place today to do that.

The CHAIRMAN. Well, if the gentleman insists on being in that state of mind, there is nothing I can do about it other than to say that in answer to your question, it may be that at some time in the future course of the committee investigation there will be an agreement reached by a majority of the committee to work along some of your suggestions. But at this time, I will not recognize you for that motion.

Mr. MCCOLLUM. Mr. Chairman, I would appeal the ruling of the Chair on that and ask for a vote.

Mr. FRANK. Mr. Chairman, I would move—

Mr. MCCOLLUM. I was recognized for a parliamentary inquiry, Mr. Chairman, and a parliamentary ruling was given.

The CHAIRMAN. Mr. Frank moves to table the motion.

The question is on the motion on the table. All those in favor signify by saying aye.

Opposed, no.

The ayes appear to have it.

Mr. MCCOLLUM. Mr. Chairman, I will ask for a roll call.

The CLERK. Mr. Gonzalez.

The CHAIRMAN. Aye.

The CLERK. Mr. Neal.

Mr. NEAL. Aye.

The CLERK. Mr. LaFalce.

Mr. LAFALCE. Aye.

The CLERK. Mr. Vento.

Mr. VENTO. Aye.

The CLERK. Mr. Schumer.

Mr. SCHUMER. Aye.

The CLERK. Mr. Frank.
 Mr. FRANK. Aye.
 The CLERK. Mr. Kanjorski.
 Mr. KANJORSKI. Aye.
 The CLERK. Mr. Kennedy.
 Mr. KENNEDY. Aye.
 The CLERK. Mr. Flake.
 The CHAIRMAN. Aye by proxy.
 The CLERK. Mr. Mfume.
 Mr. MFUME. Aye.
 The CLERK. Ms. Waters.
 Ms. WATERS. Aye.
 The CLERK. Mr. LaRocco.
 Mr. LAROCO. Aye.
 The CLERK. Mr. Orton.
 Mr. ORTON. Aye.
 The CLERK. Mr. Bacchus of Florida.
 Mr. BACCHUS OF FLORIDA. Aye.
 The CLERK. Mr. Sanders.
 Mr. SANDERS. Aye.
 The CLERK. Mr. Klein.
 Mr. KLEIN. Aye.
 The CLERK. Mrs. Maloney.
 Mrs. MALONEY. Aye.
 The CLERK. Mr. Deutsch.
 The CHAIRMAN. Aye by proxy.
 The CLERK. Mr. Gutierrez.
 Mr. GUTIERREZ. Aye.
 The CLERK. Mr. Rush.
 Mr. RUSH. Aye.
 The CLERK. Ms. Roybal-Allard.
 Ms. ROYBAL-ALLARD. Aye.
 The CLERK. Mr. Barrett.
 Mr. BARRETT. Aye.
 The CLERK. Ms. Furse.
 Ms. FURSE. Aye.
 The CLERK. Ms. Velazquez.
 Ms. VELAZQUEZ. Aye.
 The CLERK. Mr. Wynn.
 Mr. WYNN. Aye.
 The CLERK. Mr. Fields.
 The CHAIRMAN. Aye by proxy.
 The CLERK. Mr. Watt.
 The CHAIRMAN. Aye by proxy.
 The CLERK. Mr. Hinchey.
 Mr. HINCHEY. Aye.
 The CLERK. Mr. Dooley.
 [No response.]
 The CLERK. Mr. Klink.
 Mr. KLINK. Aye.
 The CLERK. Mr. Fingerhut.
 Mr. FINGERHUT. Aye.
 The CLERK. Mr. Leach.
 Mr. LEACH. No.

The CLERK. Mr. McCollum.

Mr. MCCOLLUM. No.

The CLERK. Mrs. Roukema.

Mrs. ROUKEMA. No.

The CLERK. Mr. Bereuter.

Mr. BEREUTER. No.

The CLERK. Mr. Ridge.

[No response.]

The CLERK. Mr. Roth.

Mr. ROTH. No.

The CLERK. Mr. McCandless.

[No response.]

The CLERK. Mr. Baker.

Mr. BAKER. No.

The CLERK. Mr. Nussle.

Mr. NUSSLE. No.

The CLERK. Mr. Thomas.

Mr. THOMAS. No.

The CLERK. Mr. Johnson.

Mr. JOHNSON. No.

The CLERK. Ms. Pryce.

Ms. PRYCE. No.

The CLERK. Mr. Linder.

Mr. LINDER. No.

The CLERK. Mr. Knollenberg.

Mr. KNOLLENBERG. No.

The CLERK. Mr. Lazio.

Mr. LAZIO. No.

The CLERK. Mr. Grams.

Mr. GRAMS. No.

The CLERK. Mr. Bachus of Alabama.

Mr. BACHUS OF ALABAMA. No.

The CLERK. Mr. Huffington.

Mr. HUFFINGTON. No.

The CLERK. Mr. Castle.

Mr. CASTLE. No.

The CLERK. Mr. King.

Mr. KING. No.

Mr. LEACH. Mr. Chairman, how is Mr. McCandless reported?

The CLERK. He is not recorded.

Mr. LEACH. No by proxy.

The CHAIRMAN. Mr. Dooley is aye by proxy.

The CLERK. Mr. Chairman, the ayes are 31, the nays are 19.

The CHAIRMAN. There being 31 ayes, 19 nays, the motion is tabled, and the Chair will proceed to recognize Mr. LaFalce.

Mr. LAFALCE. Thank you, Mr. Chairman.

Mr. Cutler, based on the facts and information you are aware of, has there been any criminal violation by anyone in the Clinton administration including but not limited to the White House, the Treasury Department, and the RTC?

Mr. CUTLER. Not that I am aware of, Mr. Chairman, but most—Mr. LaFalce, but most importantly, Mr. Fiske, the independent counsel, who has a grand jury and access to all of the witnesses, has so found himself.

Mr. LAFALCE. Based on those same facts and information you are aware of, has there been any civil violation by anyone in the Clinton administration?

Mr. CUTLER. When you say civil violation, if you are referring to a violation of an ethical standard, a noncriminal ethical standard, the answer is no.

Mr. LAFALCE. So there has been to your knowledge, based upon all the facts and information available to you, no criminal violation, no civil violation, no ethical violation?

Mr. CUTLER. Correct.

Mr. LAFALCE. Which leads us, it would seem to me, to the question of whether or not there has been imperfect either business or political judgment; correct?

Mr. CUTLER. Correct.

Mr. LAFALCE. Have you ever gone through a day, Mr. Cutler, without making an imperfect business or political judgment?

Mr. CUTLER. Rarely, and if I continue in this job long enough, I am sure I will be accused of something by a member of this committee.

Mr. LAFALCE. And so, basically, these hearings are on the question of whether or not individuals within the Clinton administration are perfect or imperfect human beings?

Mr. CUTLER. And whether or not our present procedures for dealing with these sensitive issues we have been testifying about could be strengthened, and I think they can be.

Mr. LAFALCE. Let's talk about that. There is nothing unethical about giving a "heads up" to your superior; is that correct?

Mr. CUTLER. There is not in my opinion, when your superior is the President of the United States, who has to deal with press queries and carry on his job. He needs to know when either important people in his administration or he himself are or may be under some form of criminal or other investigation. That doesn't mean he should interfere with the investigation, but he needs to know to perform his job, and I will tell you on the basis of my experience in this and other White Houses, it has always been done.

Mr. LAFALCE. And if you are considering the question of whether to recuse yourself from a particular position, is there anything criminally, civilly wrong, ethically wrong, or even inappropriate in discussing that question with your superiors?

Mr. CUTLER. When you say "with your superiors," I think it would have been better in this case for Mr. Altman to make his own decision and not bring it up with White House people. I have also said once it was brought up, again, with the wonderful benefit of 20/20 hindsight, I personally would have recommended saying to Mr. Altman, go ahead and recuse yourself, given all the political and factual circumstances of—

Mr. LAFALCE. So you could avoid hearings such as this.

Mr. CUTLER. Right.

Mr. LAFALCE. But there is nothing unethical about discussing that subject; is that correct?

Mr. CUTLER. Indeed, Mr. Altman had obtained both informal opinions from his own ethics counselor and from the Office of Government Ethics that he was under no legal or ethical obligation to recuse himself.

Mr. LAFALCE. I thank the gentleman.

The CHAIRMAN. Mrs. Roukema.

Mrs. ROUKEMA. Thank you, Mr. Chairman.

I want to note at the beginning that objective observers such as the *New York Times* editorial column today take a rather direct aim at the question of unethical conflicts of interest, and they have come to that conclusion. But I am concerned a little bit about the—and I know you are in a difficult position, Mr. Cutler—but I am concerned about the somewhat casual attitude you have taken about some highly questionable circumstances involving the handling of the contacts between the White House staff and the Treasury Department and the RTC. And your comments on television on Sunday, that part of these indiscretions can be attributed to are, quote—I believe it is a quote—“the heat of the moment” are really not acceptable to me. And while you may shrug and say that every White House has a helter-skelter quality to it, and I think those are your words, I find that unacceptable. You give us the impression that maybe the kids were in charge of the schoolyard here, and I think that is very regrettable.

And I think that we should understand that we are not just talking about regrettable errors of judgment, but we are talking about not one or two phone conversations, but by some calculations we are talking about well over 20 or 30 contacts. Many of these contacts involve Mr. Altman in his capacity as the Acting Director of the RTC which, of course, puts him in a very unique position with regard to whether or not criminal referrals may grow out of it.

The American people, I believe, want to have a President that will fill the White House with competent professionals, not ill-informed and inexperienced people. And I think that is what is bothering many of us, as it shows the decline of both professionalism and the ordinary standards of behavior. These individuals in the White House, as well as those political appointees in the Treasury and elsewhere, should be professionals, and they should know the responsibilities they are taking on when they accept this appointment.

And I guess that is why it bothers me so much about these questions of contact and whether or not they are ethical lapses. I reluctantly have come to the opinion that the administration must move immediately to reestablish its credibility and the integrity both of the White House staff and of the Treasury Department, and particularly in the light of the disclosures today, if true, concerning Mr. Altman's interference with Navy Secretary Dalton and RTC's contacts with him. I think he should be asked to resign.

Now, I don't know how you feel about that. My time is limited. I want further documentation of this included in the record. But I would like to ask you, Mr. Cutler, do you agree that under the circumstances, particularly in light of your Sunday statement that Mr. Altman is going to have to somehow reconcile and reestablish his credibility with the Congress, now with this additional assertion, again, if true, which is rather straightforward in the reports today, do you agree that in order to reestablish the credibility and to reconcile the Congress and the American people, that Mr. Altman should resign?

Mr. CUTLER. Let me say, Mrs. Roukema, if you will forgive me, my memory of White Houses may be a bit longer than yours. But this—

Mrs. ROUKEMA. I think so.

Mr. CUTLER. But this is not the first White House by any means in which allegations of unethical conduct have appeared and shadows have been cast by the press or others on particular individuals. The grand-daddy of all, as we know very well, was the Nixon administration.

If this White House had been in the business of trying to affect what the RTC was doing, certainly we could have done a better job than we did. It was an absolute zero. We didn't do anywhere near as well as the Nixon administration did in throttling the original investigations of the Watergate matter.

And we have, as a matter of fact, by the—testimony by the non-political career people within the RTC who made these decisions, that she felt "no pressure from Mr. Altman, Ms. Hanson, or anybody else at Treasury. They did not try to guide the way this matter would be dealt with or any other matter be dealt with. I never saw Mr. Altman try to exert any pressure directly or indirectly with respect to this matter."

And let me say with respect to Mr. Altman that I believe to the extent my opinion is of any value or relevant on this, along with the President and Secretary Bentsen whom he works for, that he has been a very effective Deputy Secretary of the Treasury, and I personally hope he continues in that job.

Mrs. ROUKEMA. How then will he reconcile his credibility with the Congress?

The CHAIRMAN. The time of the gentlelady has expired.

Mrs. ROUKEMA. Mr. Chairman, I just ask that along with my opening remarks, that the editorial of the *New York Times* that was referenced be included in the record.

The CHAIRMAN. Any objection to the request?

Hearing none, so ordered.

Mr. CUTLER. Only from me.

The CHAIRMAN. Well, you could have done worse in the *Wall Street Journal*.

[The information referred to can be found in the appendix.]

The CHAIRMAN. Mr. Vento.

Mr. VENTO. Mr. Chairman, thank you, and thank you for your statement.

Mr. Cutler, the issue of the White House role is really the heart of this matter. There is, obviously, the ongoing RTC activities. Some of us are strongly in favor of extending the statute of limitations to the maximum extent possible to cover that. So this is really the heart of the issue for this hearing. A lot of people want to cut it down to small percentages, but really our investigation is the core of anything that is going on.

The agreement of where we are at today is part of the special prosecutor agreement that we all voted for. Almost 415 people voted for it, with bipartisan leadership.

The question is, where is the beef? Where is the beef in terms of what has gone on here? It is kind of a shrinking patty. Some of us think it might be a soya burger.

Mr. CUTLER. The bottom line is that there was no effort made by anyone in the White House or any Treasury appointee to influence the RTC.

Mr. VENTO. Did somebody tell Bill Roelle he had to provide all referrals to the Secretary of Treasury, to Mr. Altman, or someone else in Washington, DC? Do you find any evidence of that in the White House? Did someone in the White House command Bill Roelle to do that?

Mr. CUTLER. No. This contact first was initiated by the Treasury general counsel.

Mr. VENTO. It was initiated by Mr. Roelle, head of the RTC. That is my understanding. Who were these regulators? Professionals and Bush holdovers, aren't they? I am speaking of 1993, regarding Mr. Roelle.

Mr. CUTLER. These are all people who go back, who were appointed first by the Bush administration.

Mr. VENTO. These are the holdovers, these are the people. The regulatory process somehow was hijacked. We would have liked to have seen it actually change, Mr. Cutler, much more quickly. It couldn't change quick enough based on what happened.

So you found no illegal acts or no unethical acts. Now, bad political judgment usually is not referred to as a crime, is it? I don't think it is a crime.

Mr. CUTLER. It would be interesting to know whether there were any contacts with the 1992 RTC on the part of the White House.

Mr. VENTO. We know that Mr. Gray has had a role. But today there are higher standards. We don't want to be judged by the past. We want to be judged by today. And the question about this criminal referral is, did someone in the White House get a copy of that criminal referral?

Mr. CUTLER. We don't know to this day what is in that other than what we have read in the press.

Mr. VENTO. There was no written documentation. All it was a reference that it was out there and that it has been ongoing and going forward; is that correct?

Mr. CUTLER. As far as I know, we never even had an oral description of what was in it other than what was reported in leaks to the press and by the press.

Mr. VENTO. Is there some sort of rule under your guidelines where only the press can give you information about what is in the criminal referral?

Mr. CUTLER. The press usually has better information faster than any of the rest of us.

Mr. VENTO. We appreciate their efforts. I think it is very good that it is open, and free and, Mr. Chairman, that we are in the process of reviewing this, and moving forward.

Now, I understand that in the conversation or the meeting that occurred, the meeting Mr. Nussbaum had with Mr. Altman, that the purpose of that meeting was to discuss the statute of limitations. Mr. Nussbaum had no knowledge of the fact that Mr. Altman was going to talk about his recusal; is that correct?

Mr. CUTLER. That is correct. None of the White House participants had any such knowledge.

Mr. VENTO. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Bereuter.

Mr. BEREUTER. Mr. Cutler, welcome.

Mr. Cutler, with respect to your factual investigation of the Madison and Whitewater matter, have you contacted or interviewed in any fashion anyone outside the White House?

Mr. CUTLER. Would you repeat that, sir?

Mr. BEREUTER. In your investigation of Whitewater/Madison, have you interviewed or otherwise contacted anyone outside the White House staff?

Mr. CUTLER. We have dealt with the Treasury counsel, Mr. Knight, and we have exchanged information with the Treasury Office of Inspector General, which was asked by Secretary Bentsen to conduct an inquiry on the Treasury side. And we have made our White House personnel involved in these contacts available to the Treasury inspector general. And we have in turn been allowed to review the transcripts of the Treasury inspector general's interrogations themselves. We have also from time to time been in contact with the counsel, the private counsel of the various individuals who have been asked to come testify before this committee and who have also testified before the grand jury.

Mr. BEREUTER. Thank you.

On the basis of—on the Madison/Whitewater matter, based upon your factual investigation, have you found any White House contacts with agencies other than Treasury or the financial institution regulatory agencies?

Mr. CUTLER. We have—there is, of course, Mr. Nussbaum's letter of, I believe, January 12 to the Department of Justice forwarding the President's request to the Attorney General for an independent counsel to be appointed. And in the course of interrogating Mr. Nussbaum, we learned that he had had two more or less social discussions about the appointment of an independent counsel, one with Mr. Webb Hubbell, who had by that time disqualified himself from anything to do with anything related to Whitewater, and the other with Judge Freeh, the head of the FBI, who was a social friend of Mr. Nussbaum's.

Mr. BEREUTER. To your knowledge, on the matters related to Whitewater/Madison Guaranty, was this the only White House contact with the Justice Department?

Mr. CUTLER. The only ones of which I am aware, yes.

Mr. BEREUTER. With respect to interagency contacts on Whitewater/Madison, are you aware through your factual investigation or other means of any contact between Treasury and the Justice Department?

Mr. CUTLER. We are not aware of any such contact, Mr. Bereuter.

Mr. BEREUTER. Thank you.

Mr. CUTLER. There was, of course, the criminal referral from the RTC to the Department of Justice.

Mr. BEREUTER. Mr. Cutler, you have expressed concern about the leaks of documents related to the Senate's investigation of Madison and Whitewater. Democratic members of the committee have been speaking rather freely to reporters about Roger Altman's diaries.

Does the White House have copies of Roger Altman's diaries?

Mr. CUTLER. We have seen—we do not have copies, but we have seen three extracts from Mr. Altman's diaries in January 1994.

Mr. BEREUTER. Are those available to this committee?

Mr. CUTLER. They are part of the documents the Treasury has been discussing, I believe, with both committees.

Mr. BEREUTER. Have you made any—have you launched any investigations of White House personnel that might have been involved in disclosure of this confidential information contained in the Altman diaries to Democratic Members of Congress or any Members of Congress?

Have you launched an investigation of any White House personnel's revelation of these confidential diaries to congressional personnel or members?

Mr. CUTLER. No, we have not. We are not aware of any indication that anyone in the White House said anything about those diaries to—certainly to any members of either committee, no.

Mr. BEREUTER. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Schumer.

Mr. SCHUMER. Thank you, Mr. Chairman.

And I want to thank you, Mr. Cutler, for your erudite and level-headed testimony. And I also want to say, and you may agree with me, that contrary to what many have said, I think this is a good day for the President, a good day for the administration, and a good day for the American people, because as far as the Washington end of this matter goes, this is the day and the hour to put up or shut up. The time for sly leaks, smug innuendo, and unsubstantiated charges is over. Starting today, everything is out in the light of day and on the record.

Now, I think there is a watchword for what we are about today, and that word is "perspective." These hearings will put this matter into perspective once and for all. It is clear that certain things were done wrong. Some of those things were done stupidly and foolishly, but they are not criminal, and they did not violate established ethical rules. They should be fully brought to light. The people throughout government and in the administration should learn from these mistakes, and procedures that allowed them to happen should be corrected.

But for my colleague, Mr. Leach, to say, as he did on the floor of the House on March 24, that, quote, "Seldom have the public and private ethics of professionals in the White House and executive departments been so thoroughly devalued," simply lacks the judicious and reasoned perspective that this matter demands.

We need less of that kind of heated exaggeration and more intelligent light here. We must find out exactly what happened, and we must correct any flawed procedures. But this is not a Watergate at all. It never was, and we shouldn't be losing that perspective.

And what I would like to ask you first in reference to my feelings about this is, you have mentioned that procedures should change. Could you elaborate? What procedures should change so that these wrongs won't occur again?

Mr. CUTLER. First, I wouldn't call them wrongs, Mr. Schumer. I would call them a certain laxness in the procedures for dealing with this kind of sensitive heads-up information relating to a crimi-

nal referral or a law enforcement proceeding. First, there had been memoranda issued early in the Clinton administration to all White House personnel by the White House counsel saying that there should be no contacts with other law enforcement agencies relating to particular cases or matters or investigations without the prior approval of White House counsel.

Those were repeated on a couple of occasions. But, apparently, they didn't sink in as much as they should, because although it is true that in each of the several meetings that actually occurred the White House counsel was present along with other White House staffers, there were a number of individual phone calls or encounters involving noncounsel personnel that were not approved in advance by the White House counsel.

That needs constant reminding, and we put out—Mr. Klain put out another memorandum to that effect in March of this year and we need to do more of that. It is a little bit like a 55-mile-an-hour law or other procedural rules such as the signs I see, no food or drink in this committee room, I will bet you it gets violated fairly often.

Second, I think it would be better that rather than allow any of these contacts to occur between nonlegal staff people, even with the approval of the counsel, it would be much better if only the White House counselors, deputy, and the agency counselor or his or her deputy took part in such discussions, if there were a channel for communication of careful lawyers talking to one another.

And third, I think we should—one thing we have not done, except with the Department of Justice, is to agree on some ground rules as to what it is appropriate to talk about, like a heads-up or the fact of an investigation, and what is inappropriate to talk about, such as “lay off this or it is going to create some terrible political problems.” Those are the three main things we need to do.

Mr. LEACH. Point of parliamentary query. The gentleman cited my name. May I be entitled to respond for 30 seconds?

Ms. WATERS. Objection.

Mr. LEACH. This is a query. There is nothing to object to. It is a query to the chair.

The CHAIRMAN. If the gentleman—

Mr. SCHUMER. Mr. Chairman, I wouldn't have a problem if he wants to respond.

The CHAIRMAN. I think if the gentleman will be brief and succinct, he is entitled to it.

Mr. LEACH. I appreciate it. There is a citation made by two gentlemen on the committee to a statement I made on the floor. That was a statement made about the entirety of the Whitewater circumstance, which, among other things, included the probe of the handling of Vince Foster's office. That is not a subject of this hearing. And I think that members of this committee might well want to reserve judgment until this committee is entitled to hear about all aspects of the Whitewater probe. I just want to lay that on the table. I appreciate the chairman allowing me to respond.

Thank you.

The CHAIRMAN. We thank you for the clarification and explanation.

Mr. Roth.

Mr. ROTH. Mr. Chairman, Mr. Cutler, I think what this hearing needs is some plain talk.

We have an S&L in Arkansas that went bankrupt and cost the American taxpayers \$60 million. Federal regulators suspect criminal acts contributed to the failure.

The S&L is linked to a land development company called Whitewater and the Clintons, hundreds of thousands of dollars are missing from the S&L, and the investigation begins and, lo and behold, the Clinton name shows up in the investigator's report. Back in Washington all hell breaks loose. White House and Treasury officials move and more than 20 meetings on this one S&L are held. The news leaks out. Everybody hires lawyers. An independent prosecutor is named. The President even hires Mr. Cutler. Some of us in Congress push for our own investigation because, to put it simply, this smells to high heaven. We have seen it all before. Now we have this hearing. But the Democrats set the ground rules to prevent us from asking the big questions. If these ground rules applied to O.J. Simpson's trial, you couldn't ask him about the knife, you couldn't ask him about the glove, you couldn't ask him about the blood. All, under these ground rules, you could ask is, so, O.J., how was your flight to Chicago?

If Nixon had these ground rules he would have served two terms. The heart of the matter is this: It looks as though the Clinton White House tried to kill the investigation, and this S&L, because of Bill and Hillary Clinton's names, turned up. Why? Why did their names turn up?

We want to question the key people involved, but we are here today with the President's counsel. You are the President's lawyer. You are not an impartial person. You are here defending the President. You are one of the smoothest operators in Washington. You are one of these superlawyers.

If nothing went wrong, why did he hire Mr. Cutler? I know you are going to tell us nothing is wrong but that is like the North Koreans saying, bomb, what nuclear bomb? I don't hold it against you, Mr. Cutler. This is your job, just like O.J.'s lawyer.

But I have a question, Mr. Cutler. If nothing is wrong here, why upstairs in the room is there a 24-hour-a-day guard on the Whitewater papers? If you are not hiding anything, why is that guard there 24 hours every day?

Mr. CUTLER. Mr. Roth, the rules for protecting the confidentiality of those papers, until this hearing began, there are no rules that I am aware of now that the hearing has begun. But the rules protecting confidentiality until the hearing began were the rules set by this committee, not by White House counsel or by—

Mr. ROTH. But, Mr. Cutler, you are much too smooth. These rules were set down by this committee at your request.

Mr. CUTLER. They were not at our—we asked that information we submitted, over 4,000 pages of it, and interviews that we agreed to, be held confidential until the date of the hearings so that particular pieces of paper or particular comments made by some witness or other would not be quoted out of context in a way in which there was no opportunity for reply. That is all we asked for. And the rules were the committee's rules. I am telling you what happened.

Mr. ROTH. There were no papers there dealing with national security or people—we have never had this precedent.

Mr. CUTLER. Of course, not. But in every investigation, there are always some documents that can be taken out of context, and there are always—there is always the danger of leaks that in this interview or that interview, somebody said something out of context with the other things that happened.

And if I could go on to where you began, with all respect, there were no rules set on what Independent Counsel Fiske could do. He is the criminal justice law enforcement person. This is not a criminal justice investigation that you are conducting here.

Mr. ROTH. But, Mr. Cutler, in all fairness, didn't you contact the chairman of this committee and ask him, work with him for rules dealing with this hearing?

Mr. CUTLER. We asked to have the information we submitted, both in documents and whatever was said by our witnesses in interviews, kept confidential until the date of the hearing.

Mr. ROTH. So the answer is then—

Mr. CUTLER. The committee staff then said to us here are the rules we apply in that situation. We said, that sounds fine to us, and we wrote a letter delivering all of our documents saying we were delivering them on the basis of the understanding that these were the rules the committee was setting. We did not write those rules or propose them.

The CHAIRMAN. The time of the gentleman has expired.

Mr. ROTH. I am sorry, because I had some more questions, Mr. Chairman.

Thank you.

The CHAIRMAN. We all do. Mr. Frank.

Mr. FRANK. Mr. Chairman, I think we have just seen an outburst of death envy. One of the aspects of this that has been ruled out—dealing with a tragic suicide—left my colleague maybe a little bit hurting for drama, so he brings in the *O.J. Simpson* case, the least appropriate analogy I have heard in 14 years of Congress, even from the gentleman from Wisconsin. The fact is that as Mr. Cutler has pointed out, the prosecutor here is totally unrestricted. Robert Fiske, a Republican, named to a high-ranking position in the Justice Department by Republicans, was given total freedom.

Second, to talk about a brutal murder case in the context of this situation really is unworthy, in my judgment, of the process.

Now, I would like to get to some specifics. And I am going to go slowly so that people who are keeping diaries can get it all down for the record, because I think this goes beyond not interfering with the investigation. I think the evidence shows this administration and this Congress vigorously pursued the investigation.

First, we had some conversations about September and October. When was the criminal referral made by the RTC to the Justice Department?

Mr. CUTLER. We do not know for certain when it was made other than by press reports. It was, apparently, finally sent to the Department of Justice around, I believe, it is October 8.

Mr. FRANK. Is there any allegation that anybody outside the RTC told anybody inside the RTC "don't send that referral"?

Mr. CUTLER. Not that I am aware of. In fact, as I said, the senior nonpolitical lawyer within the RTC in her testimony before the inspector general has expressly said no one asked them to do anything.

Mr. FRANK. That is decision point one, should there be a criminal referral.

Then there was a question whether there should be a civil investigation of the RTC. Again, I apologize for getting factual, but it does seem to me that might occasionally be our procedure. We talk about health care and O.J. Simpson and other things, and I understand why people don't want to get back to the facts here. Let's get back to the facts.

The first issue was, should there be a criminal referral, and there was, and it was unhindered.

Second, should there be an investigation into the facts, and that is the point where Mr. Jay Stephens and his law firm was designated. Was there any before-the-fact or after-the-fact effort to get rid of Mr. Stephens?

Mr. CUTLER. No, there was not.

Mr. FRANK. And that happened in January?

Mr. CUTLER. That happened—it may have happened in January, and I think the first the White House heard about it was probably in mid-February.

Mr. FRANK. Right. So these conspirators in the White House, they didn't even know when the criminal referral was made or when Jay Stephens had been hired. There does seem to be a lot of after-the-fact expostulation. Someone suggested that it shows the President had a cozy relationship with his staff, which I am glad it survived the Woodward book that they had a cozy relationship. I think that would be a good thing.

The next point is the statute of limitations. If I am correct, when we talked about Mr. Altman's recusing himself or not, the only issue which would have had to be decided at that point by the RTC, because they had already made the criminal referral and they had already hired Mr. Stephens, was the extension of the statute of limitations on civil matters to cover Madison.

Now, that, if I am correct, was voted by the House in November, over the objections of a majority of the Republicans who voted against the bill, and it was then agreed to in a conference early in February, passed and signed by the President as one of the first things in 1994.

After we had referred—after you had seen the criminal referral and the hiring of Mr. Stephens and the decision to rescind the statute of limitation, were there any decisions left by the RTC to be made about this other than to let the procedures take their course?

Mr. CUTLER. Other than the decisions to be made in the civil investigation that Mr. Stephens and his firm were conducting, and no effort was made by anyone to alter or affect any such decision.

Mr. FRANK. Between December and February when all this is going on, a criminal referral is made with no interference, Jay Stephens is hired to look into the civil aspect, and Congress and the President together decide to extend the statute of limitations to give Mr. Stephens more to do and finally, a Republican, Mr. Fiske, is appointed, and I remember, my advice to Janet Reno was not to

appoint Mr. Fiske, but to wait until we got an independent counsel so she could have three judges do it, and Senator Dole and others said, no, you do it, you do it yourself. So she appointed Mr. Fiske, a Republican, and we then have a criminal referral, we have Jay Stephens' investigations, an extended statute of limitation, and we have Mr. Fiske, with as broad a charter as any independent counsel has ever had.

Were there any other actions taken by the government with regard to this?

Mr. CUTLER. You might add Senators Dole, D'Amato, and Congressman Leach praised the appointment of Mr. Fiske.

The CHAIRMAN. The time of the gentleman has expired.

Mr. McCandless.

Mr. MCCANDLESS. Thank you, Mr. Chairman.

Mr. Cutler, I am interested in the RTC aspect of this, having been here and suffered through the development of FIRREA, the creation of RTC, and everything that has happened since then, and the smile on your face demonstrates the problems that have developed.

Mr. CUTLER. I have some memory of FIRREA.

Mr. MCCANDLESS. If one were to go through this, one would come up with a quick conclusion that the RTC regional authority made some specific recommendations relative to Madison to the Federal Washington, DC officials, and that these recommendations relative to Madison were overruled, ignored, or in some other way not agreed to.

Do you know anything about this?

Mr. CUTLER. I don't think that is correct. Let me read you what the RTC nonpolitical career attorney said to the Treasury inspector general. This is a March 30, 1994 letter from the two nonpolitical heads of the RTC, Ms. Kulka and Mr. Ryan, to Mr. Leach, I believe. "No pressure has been exerted by the Treasury, the White House or any other source in the executive branch concerning the performance of our responsibilities with respect to Madison Guaranty or Whitewater since either of us joined the RTC. The overriding fact is that the referrals were made exactly as the investigators had prepared them, irrespective of whether there were internal staff disagreements about them or not."

Mr. MCCANDLESS. So the answer to my question is, no, there was never a time within the RTC that a regional recommendation was ignored or overlooked or in some other way sidestepped by the Federal authorities?

Mr. CUTLER. If you are asking about cases other than Madison Guaranty, I have no information on that, Mr. McCandless.

Mr. MCCANDLESS. We talked here about, earlier in your statement, you talked about poor matters of judgment. One area here that is a quote from another source of information, that while Mr. Altman was head of the RTC, which was supposed to be a politically independent agency, he at the same time was talking to Mrs. Clinton about how to avoid further investigations, and he is quoted as saying the boil must be lanced.

Do you have any comments on that?

Mr. CUTLER. I believe Mr. Altman says that he was simply recording his own impressions. This is in January 1994, before an

independent counsel was requested by the President, and that his view—and the reason for the phrase “the boil must be lanced” was that it was politically desirable for the President himself to request the appointment of an independent counsel by Attorney General Reno, which the President did on January 12.

And these notes, I think, are dated a few days before that.

Mr. MCCANDLESS. Mr. McDougal and the President and Mrs. Clinton were equal partners in this development?

Mr. CUTLER. The two McDougals and the two Clintons, that is correct.

Mr. MCCANDLESS. Yet, they did not suffer equal losses. How do we explain that?

Mr. CUTLER. I don't know whether we are straying beyond—

The CHAIRMAN. Yes.

Mr. CUTLER. I would be glad to explain it if you wish.

The CHAIRMAN. The witness does not have to reply.

Mr. MCCANDLESS. I am sorry, Mr. Chairman, I didn't hear you.

The CHAIRMAN. The witness does not have to reply to the question because it is outside of the ambit of the hearings.

Mr. MCCANDLESS. I can't see because of a cameraman, but I assume my time is up; is that correct?

Mr. CUTLER. Still yellow.

Mr. MCCANDLESS. We have just been ruled out of order, according to my understanding. The concern I have is that if you play through a series of events from investment to final result of the investment, whether it be a politically astute person, elected office, businessman, or whatever, unless there is some previous agreement, be it verbal or otherwise, they share equally in the losses or the gains. And my only question was how come that didn't happen?

The CHAIRMAN. The time of the gentleman has expired.

Mr. BACHUS OF ALABAMA. Mr. Chairman, I have a parliamentary inquiry. In light of Mr. Cutler's remarks about removing the restrictions and limitations on the documentation which the White House has produced and Treasury, are those limitations and restrictions still applicable to that documentation that has been produced?

The CHAIRMAN. If the gentleman will recall, the Speaker's reply to my query was anticipated. The agreement, as Mr. Cutler well pointed out, was that up until the hearings would start, we will respect the confidentiality of those documents. In the meanwhile, staffs and members have access to everything.

However, in view of the fact that the special counsel has not indicated he has completed the Washington phase, the reason our rule, as I gave to Mr. McCollum's request, is that we would have to—down the line and at some future time, will have to segregate those documents of confidentiality that have to do with the unfinished portion of the investigation in order to keep faith with the commitments that have been made, so that I would say that once given that opportunity, I believe that the agreement would stand up insofar as the completed Washington phase of the investigation.

Mr. BACHUS OF ALABAMA. Mr. Chairman, I have a letter here from Tom Foley to you.

The CHAIRMAN. That is right.

Mr. BACHUS OF ALABAMA. That advises us that the part of the investigation concerning White House contacts with RTC and Treasury has been completed. Is that correct? Dated July 25.

The CHAIRMAN. I read the last paragraph, and I think the controlling paragraph of that letter, in which the Speaker confirms the fact that the intent of the leadership agreement—if you have that letter, “Mr. Fiske’s earlier application was inaccurate, but that in no way alters the underlying principle of the bipartisan leadership agreement that your committee’s hearings shall be structured and sequenced so that they will not interfere with the ongoing investigation of special counsel Robert B. Fiske.”

Mr. BACHUS OF ALABAMA. I understand that, but the same letter has also said that he has completed his investigation into the RTC Treasury/White House contacts, and the documents upstairs only relate to that aspect of the investigation which he says he has completed.

The CHAIRMAN. The gentleman is in error with respect to that.

Mr. FRANK. Mr. Chairman, if I understand you correctly, what you are saying is our original understanding was that Mr. Fiske would have completed both the contact with the RTC and the Foster papers; that in fact he has done that part, but that you would have no objection, once we agree on the physical process of separating out any that may still apply to the Foster papers, which would still be under seal or under these restrictions and release the rest. Why don’t we just go ahead and agree to work that out? I think that is the point. When we put these all together, we thought he was going to be finished with everything. We will take out those where he is finished.

Mr. BACHUS OF ALABAMA. I would so move. I would move that all documents which are related to the contact between the White House, RTC, and Treasury, which have been produced for this hearing, be released unless they deal with matters still under investigation by Mr. Fiske.

The CHAIRMAN. If the gentleman will withhold on that motion, I have said that at the proper time, and given sufficient time to make a determination of which of the documents being held in a secure environment would be proper to release as not in any way impinging improperly on the current investigation by Mr. Fiske, we will do so.

So I will ask the gentleman to suspend an unnecessary motion. You have that commitment.

Mr. LEACH. Will the gentleman yield?

The minority respects that commitment, but so that there is no misapprehension, at the beginning of the day, I sought unanimous consent both to put a large statement in the record and to submit a series of documents which we provided the majority.

To the best of my knowledge, these documents only relate to the subject matter of the hearing. I don’t want anyone under misapprehension that that has occurred under unanimous consent of the committee.

Mr. FRANK. Mr. Chairman, we are going to be back here again on Thursday to the delectation of all, and I would think you might be able to make an announcement appropriately of what we have been able to figure out.

The CHAIRMAN. It would be my expectation we could. And then if the gentleman at that time feels a motion—I would suggest you do that.

Mr. BACHUS OF ALABAMA. I withdraw the motion.

The CHAIRMAN. I thank the gentleman.

Well, the time of the gentleman had expired. And so we now recognize Mr. Kanjorski.

Mr. KANJORSKI. Thank you very much, Mr. Chairman.

Mr. Chairman, it was funny, perhaps ironic when we broke at 11, we went over to witness one of the marvels of the world. In 1994, we have finally witnessed the coming together of the King of Jordan and the Prime Minister of Israel in bringing about a peace that has eluded the world for thousands of years. It amazes me that after witnessing this historic event, that we should return back here to hate and rancor and partisanship. It seems to reflect on just why so many people across America, including in my district, wonder whether or not this democratic government of ours that is well over 200 years old can survive.

I would only caution some of my colleagues that the subject of today's hearing is a serious question. It deserves the light of day. But it can be done in a very civil manner, without innuendo and disregard for the integrity of either the witnesses or the individuals being discussed. And if we hold that in mind I think we will move this along much further and much faster.

I have the pleasure of representing and having as one of my constituents a member of the White House staff who was called before the grand jury, a charming young lady from an outstanding family, with a legal background in her family going back some three generations. And so, Mr. Cutler, I am going to direct a series of very quick questions so we can lay on the table, some facts that I think have been touched before but not definitely resolved.

First of all, did you find any evidence whatsoever that anyone on the White House staff committed any criminal acts?

Mr. CUTLER. No.

Mr. KANJORSKI. Did you find any evidence whatsoever that anyone on the White House staff asked anyone else, either in the White House, the Treasury, or the RTC, to commit any criminal acts?

Mr. CUTLER. No.

Mr. KANJORSKI. Did you find any evidence whatsoever that anyone on the White House staff obstructed in any way any investigation of the Treasury, the RTC, or the Justice Department, of either Whitewater or Madison?

Mr. CUTLER. No.

Mr. KANJORSKI. Mr. Cutler, did you find any evidence whatsoever that anyone on the White House staff committed any civil infractions or asked anyone else at the White House, the Treasury, or the RTC to do so?

Mr. CUTLER. No.

Mr. KANJORSKI. Mr. Cutler, did you find any evidence whatsoever that anyone on the White House staff violated any government ethics standards or asked anyone else in the White House or the Treasury or the RTC to do so?

Mr. CUTLER. No.

Mr. KANJORSKI. So am I correct, Mr. Cutler, in concluding that the only infractions which may have occurred were relatively minor violations of this administration's own internal staff guidelines, and that these violations occurred only because this administration has adopted stricter guidelines than any previous administration?

Mr. CUTLER. I think that it is correct that there were violations of internal White House guidelines, Mr. Kanjorski. I also think we should have and are now improving our procedures further to make sure that not even the most minor questions could arise.

Mr. KANJORSKI. Thank you very much, Mr. Cutler.

Mr. Chairman, I give back the balance of my time.

The CHAIRMAN. Thank you, Mr. Kanjorski.

Mr. Baker.

Mr. BAKER. Thank you, Mr. Chairman.

Good afternoon, Mr. Cutler. I hope your day has been pleasant so far.

I have a series of statements that will lead ultimately to a principal point, so please bear with me; and I echo the comments of those who have indicated your arrival at the White House was at least a small breath of fresh air of ethics and administrative skill—and you have acted professionally and competently here today—and was informed that your role, after arrival, was to administer the release of certain documents and to exercise, based on your 50 years of legal experience, what would come under the purview of the term “redaction”—simply stated, “removed,” “eliminated.”

Mr. CUTLER. Correct.

Mr. BAKER. In that light, I was curious as to the standard you may have exercised in that redaction effort. And you responded earlier to a question by the chairman, how that was achieved; and as I understand your response, it was to the effect, if it had no relationship to Madison, the Whitewater matter, or the RTC, then it was redacted, or if in your opinion it was outside the scope of this committee's jurisdiction for this hearing, it may have been redacted. Am I correct generally?

Mr. CUTLER. I think I put it slightly differently, Mr. Baker.

Mr. BAKER. Please, illuminate.

Mr. CUTLER. I said if it was information called for by the request for documents, then it was provided. If it was information not called for by the request for documents, then it was redacted.

Mr. BAKER. But the standard for which that redaction judgment was made did have something to do with the scope of committee jurisdiction?

Mr. CUTLER. Absolutely.

Mr. BAKER. And as to whether it was, in your opinion, related to Madison Guaranty or any of those related institutions?

Mr. CUTLER. Yes. The request for documents were documents relating to the White House-Treasury contacts, documents relating to the disposition of the files in Mr. Foster's office, which we produced, but which, as the chairman—

Mr. BAKER. I think I understand. If I may, I am under some duress for time.

Mr. CUTLER. And documents relating to the suicide.

Mr. BAKER. Let me move on. For example, pointing to the subject of my concern, this is a document which is redacted, so people who haven't seen redacted know what it looks like.

This is a chronology. It is interesting: It doesn't have a date, it doesn't have a time, it doesn't have a title; it is a very interesting chronology. But, apparently, it was redacted. We can't make a judgment as to whether this is important or is not important, based on the fact it has no title.

We go to another document, which I found to be of interest, which just says "redacted, 22 pages," obviously, quite a lengthy sheet of paper represented by this one blank sheet.

We go to another document, "Related Synopsis," and this is the one I found of particular interest, and understanding your scope in judgment in this matter, "Synopsis of Whitewater Madison Guaranty Matter," 40 pages long, the entire thing, amazingly, was redacted. And it seems as though the title fits within the purview of this hearing and is on point with the subject of our inquiry.

But that is not my real question.

Mr. CUTLER. May I answer what you just said, Mr. Baker?

Mr. BAKER. In just a moment, because you have time and I don't.

With regard to the issue of real concern, this is a memo stamped "Confidential," which is from Harold Ickes, I believe then Deputy Chief of Staff to the First Lady, I believe, Mrs. Clinton, dated March 1 regarding Resolution Trust Corporation. It is my understanding that shortly after Mr. Altman met with Mr. Nussbaum and others concerning the RTC statute of limitations, he received an opinion from the Ethics Officer of the Treasury that he, as the acting head, did not have to recuse himself from matters involving Madison Guaranty. I will confirm the situation. And the document accompanying this is noted to be 25 pages, all of which is redacted.

Now, if I am misunderstanding the scope of this committee's jurisdiction or that these matters are not a subject of interest to this hearing, it is sort of like saying, where is the beef, when somebody stole the kitchen. There is nothing here for us to look at, and I am afraid the redactions have obviated our ability to come to appropriate conclusions based on the information—

Mr. CUTLER. Mr. Baker, you have very competent minority counsel and there is very competent majority counsel.

Mr. BAKER. Let me—I am just out of time and I will yield back, because they will call the light on me, and I will be gone.

Mr. CUTLER. I want to be able to respond.

Mr. BAKER. My point is, I had inquiries of the White House as of yesterday. Would you object to releasing the content of this one memorandum to this committee for the purposes of our review?

Because we have called, as of yesterday, through our competent Republican legal counsel and as of 8 minutes ago, we still had no response as to releasing that document for our review, it is hard to come to the conclusion that this matter is being held in an open environment when we have 4,200 single sheets of paper, half of which are newspaper reports, others unimportant calendars, and the residual documents relating to the matters at hand have been so heavily redacted, we can't read them.

Mr. CUTLER. Mr. Baker, lawyers deal with one another redacting documents all the time. Your committee framed the request. We re-

sponded to the request, and we gave you every relevant piece of paper, including the extract you just read to us. You seem to be assuming that what was redacted was the ethics opinion.

Mr. BAKER. No, no.

Mr. CUTLER. That is not what was redacted.

Mr. BAKER. It is not able for me to reach that conclusion.

Mr. CUTLER. What was redacted was not called for by the committee's request for documents.

The CHAIRMAN. The question has been answered.

Mr. BAKER. I was just under the impression it was my time.

Mr. CUTLER. We will work this out with your counsel and do the very best we can to satisfy you.

Mr. BAKER. Is your answer that you will not provide that document?

Mr. CUTLER. Our answer is, we will only provide to you that which you asked for. If what is—

Mr. BAKER. I have asked for—

Mr. CUTLER. If what is redacted is not within what you asked for, we will not provide it. You can ask for more if you wish.

Mr. BAKER. Good. Thank you.

The CHAIRMAN. Mr. Kennedy.

Mr. KENNEDY. Thank you, Mr. Chairman. Mr. Chairman, I think what we have just seen here is the kind of overreaching that has become part and parcel of this entire episode.

The fact of the matter is that Mr. Cutler has in no way sought to leave out any pertinent information. The White House has demonstrated the exact opposite of oversupplying information with regard to this entire investigation. And I don't think that anyone on the other side of the aisle would suggest that there has been a lack of information that has been provided. Anyone, the press included, has concluded, it seems to me, that all pertinent information has been turned over, including, I must say, the head of the investigation that was identified by both the Republicans and the Democrats and Mr. Fiske.

So that line of questioning, I think, is just irrelevant and trying to make political points, not relevant ones, with regard to trying to pursue this investigation.

I want to thank Mr. Cutler for the statement that he made earlier. I think it was an excellent one. It provided much clarity in terms of how this investigation has gone on. I also congratulate you, Mr. Chairman, on a well-run hearing.

I do think that it is time to put this issue in some legal and ethical perspective. The fact is that, as I understand the comments thus far, there has been a finding of no legal violations and no ethical violations so far in your investigation or Mr. Fiske's investigation, correct?

Mr. CUTLER. That is correct. Mr. Fiske's findings are with respect to people at the White House and the Treasury. My findings as to the ethics violations are only what I was charged with; namely, the people at the White House. But I have every reason to hope and expect the same thing will be said as to the Treasury people.

Mr. KENNEDY. My conclusion is that what we have here are, at worst, some human errors that are very, very understandable. It seems to me that what is necessary is to move this issue to a point

where ordinary citizens can begin to understand what actually took place.

Now, Mr. Cutler, let's just compare the actions of this White House staff in this particular case with the actions of White Houses in the past. It seems to me that under—in the—we have heard testimony in this committee by Mr. William Seidman, who said that the former head of the—as former head of the FDIC, he wrote in his book that Boyden Gray, President Bush's White House counsel, called the FDIC general counsel about the Neil Bush case. He apparently wanted some special consideration for Mr. Bush.

Did you find any evidence that anyone in the Clinton White House had called the RTC to get special consideration for anyone relating to Whitewater?

Mr. CUTLER. No.

Mr. KENNEDY. There is also evidence to suggest that Mr. Gray in the Iraqgate case got his hands on the Justice Department's prosecution memo. He reportedly called the Justice Department and asked why the case was being pushed.

Did anyone in the Clinton White House call the RTC and ask why the Madison case was going forward or whether or not that should be influenced?

Mr. CUTLER. No.

Mr. KENNEDY. Well, it just seems to me that what we have got here is an instance of the Clinton White House being held to a different standard, and I think a higher standard; and I think it passes the test.

It seems to me that for months the Republicans have been barking about what they claim to be a dire threat to the democratic process, that they fancied themselves zealous watchdogs of the door of liberty. But what we really have here is a case of the dog chasing its own tail.

The Republicans have failed to prove any wrongdoing, and so they are left pursuing their own increasingly desperate and bizarre theories, theories about conspiracies and coverups that have absolutely no proof to back them up.

Where was their zeal when it was truly needed? Where were they when Ollie North was selling weapons to terrorists and they were silent? Where were they when George Bush was helping to build Saddam Hussein's war machine? They were silent. Where were they when Neil Bush and his cronies at Silverado used taxpayers' funds to set up their own piggy bank for favored hucksters? Again, they were silent.

It is time that the Republicans remained silent.

I yield back the balance of my time.

The CHAIRMAN. Mr. Nussle.

Mr. NUSSLE. Thank you, Mr. Chairman.

Mr. Cutler, it is my understanding from your testimony that you conducted interviews with the White House personnel. What I am still curious about is, did you personally conduct interviews with members of the Department of the Treasury or the RTC or the Department of Justice?

Mr. CUTLER. No, Mr. Nussle, we did not.

Mr. NUSSLE. So, in other words, the only interviews you had in your investigation were conducted with White House personnel?

Mr. CUTLER. Yes. But if I could go on, we have talked, as I said, with the Treasury people. This is——

Mr. NUSSLE. Mr. Knight and others?

Mr. CUTLER. Yes.

Mr. NUSSLE. If I could go on then, in your chronology you have a situation here where you described testimony by Ms. Hansen, Mr. Altman, and others, Mr.—all sorts of folks that, according to what you have just said, then are not interviews that you personally conducted, but are materials that have been referenced by Mr. Knight or others, and you obtained those materials secondhand; is that correct?

Mr. CUTLER. We have talked to the inspector general of the Treasury, who has been conducting his own investigation, and we——

Mr. NUSSLE. The point is, that you didn't interview Mr. Altman.

Mr. CUTLER. May I finish my answer?

Mr. NUSSLE. If I could ask you specifically, Mr. Cutler, did you interview Mr. Altman?

Mr. CUTLER. I am trying to correct myself, if you let me, to say that my staff did interview Mr. Altman and Mr. Steiner and Ms. Hanson's lawyers.

Mr. NUSSLE. Lawyers?

Mr. CUTLER. Yes.

Mr. NUSSLE. But not Mr. Altman.

Mr. CUTLER. I said, we did interview Mr. Altman, Mr. Steiner, and Ms. Hanson's lawyers.

Mr. NUSSLE. OK. Were the interviews that you conducted with the personnel at the White House—Mr. Altman, others that you conducted these interviews with—were they done under oath?

Mr. CUTLER. Were they done with what?

Mr. NUSSLE. Under oath.

Mr. CUTLER. No. They were simple interviews.

Mr. NUSSLE. OK. How were they recorded? What was your procedure that you used personally or professionally to record these interviews so that they could be kept for recordkeeping?

Mr. CUTLER. The group who assisted me, Ms. Sherburne and Ms. Cheston, among others, took notes.

Mr. NUSSLE. Was there an audio recording, a video recording?

Mr. CUTLER. No. These were informal interviews.

But may I remind you that the Treasury inspector general took full depositions of all of those people, and in the exchange arrangement we have had with them since this inquiry started, we have given the Treasury inspector general access to all of the White House people, so he has recorded interviews with them; and we have been allowed to see the transcripts of the interviews that the inspector general conducted with the Treasury people.

Mr. NUSSLE. One of the things that we have discovered in your interviews with potential witnesses is that there have been some discrepancies with the testimony that you gave us today. I am not suggesting that discrepancy is on your part, I am just suggesting that there may be some holes, some differences of opinion, maybe some different facts that have been expressed.

What we would like to know is, would it be possible for you to provide the records of those interviews, the notes, or the tran-

scripts that you received from Treasury so that we could more fully investigate on our behalf and prepare for the witnesses that will be coming?

Mr. CUTLER. These are Treasury transcripts, and you will have to deal with them.

With respect to our own notes, they are what are known as lawyer's work product, just as your staff have their notes of their interviews that they have conducted; and lawyer's work product, including the impressions we have formed in the course of the interviews, are usually protected, and we would assert that.

Mr. NUSSLE. Isn't it my understanding that the privilege that you have, attorney-client in this situation, the client can in fact waive and that, in other words, the President can waive this privilege and allow us to see those notes so that we can, you know, in a sense of cooperation, find out and get to the bottom of this?

Mr. CUTLER. There are several—there are two different privileges. I don't know if you want to use up your time on this. There is a lawyer-client privilege which only the clients can waive; there is a lawyer's work product privilege which the lawyer himself can assert; there is a reporter's privilege—nobody asks reporters for their notes of interviews, I take it.

With respect to the discrepancies you mentioned, I dare say, Mr. Nussle, if you were asked 3 months, 2 months after meeting with some other members of this committee, what happened, who said what, each of you would have a somewhat different recollection of what happened.

Mr. NUSSLE. Again, I would just state, I am not suggesting that those discrepancies are related to you personally, sir; I am only relating that—thank you, Mr. Chairman.

The CHAIRMAN. Mr. Flake.

Mr. FLAKE. Thank you very much, Mr. Chairman.

Mr. Cutler, I am going to ask you the names of certain persons and ask if they gave their full cooperation if, indeed, you interviewed them. If you did not, you may state so.

Bernie Nussbaum, did you interview him? Did he give you his full cooperation, and did he try to influence you in any way?

Mr. CUTLER. He gave us his full cooperation; he did not try to influence us.

Mr. FLAKE. Mr. Bruce Lindsey, did you interview him, and did he give you his full cooperation, and did he try to influence you?

Mr. CUTLER. Who did you mention this time?

Mr. FLAKE. Mr. Bruce Lindsey.

Mr. CUTLER. Mr. Bruce Lindsey, yes.

Mr. FLAKE. Did you interview the President?

Mr. CUTLER. I myself talked to the President, yes, and he gave us his full cooperation.

Mr. FLAKE. Mr. Stephanopoulos.

Mr. CUTLER. Yes.

Mr. FLAKE. Mr. Ickes.

Mr. CUTLER. Yes.

Mr. FLAKE. Mr. Gergen.

Mr. CUTLER. We did not interview Mr. Gergen, I believe, and I do not believe he has any pertinent information.

Mr. FLAKE. All right.

Margaret M. Williams.

Mr. CUTLER. Did you say Gearan? We have interviewed Mr. Gearan and Ms. Williams.

Mr. FLAKE. And he gave you—

Mr. CUTLER. Everyone gave full cooperation.

Mr. FLAKE. Mr. McLarty.

Mr. CUTLER. Yes.

Mr. FLAKE. Mr. Altman.

Mr. CUTLER. Yes.

Mr. FLAKE. And Ms. Hanson.

Mr. CUTLER. We interviewed Ms. Hanson's lawyers, who gave us full cooperation.

Mr. FLAKE. And in every instance there was no intent to try to influence your investigation?

Mr. CUTLER. None at all. Each of them, of course, gave us his or her impression of what had happened.

Mr. FLAKE. Thank you very much.

I yield back, Mr. Chairman.

The CHAIRMAN. Mr. Thomas.

Mr. THOMAS. Yes, thank you, Mr. Chairman.

Mr. Cutler, I presume you would agree with the concept that openness in government is a vital element of a democracy, wouldn't you?

I will state my question again. You would agree that openness in government is a vital element of democracy, would you not?

Mr. CUTLER. Absolutely.

Mr. THOMAS. That is the real issue here. We go through a lot of lawyerly things, and that is fine. But the fact is, openness and candor and availability is really the issue.

Mr. CUTLER. I think I said when I first took this office again in Washington, trust is the coin of the realm, and that I intended to stand by that.

Mr. THOMAS. It is interesting that—and I certainly agree with that. But you know, if you went through all of the obstacles that have come about prior to this hearing, whether they be Mr. Leach's statement or whether they be your hiring or whether they be the committee's restrictions or whether they be the leadership, certainly wouldn't incline you to think that there was great candor and openness here, would you think?

Mr. CUTLER. Oh, I don't agree with that at all, Mr. Thomas. Remember, it is the Congress that wanted an independent counsel. An independent counsel will always want to conduct his investigation in a way in which each witness—

Mr. THOMAS. Well, let me interrupt you to say that the independent counsel doesn't restrict the ability of the Congress to have its own hearings.

Mr. CUTLER. All I am saying is Congress cannot have it both ways. Congress cannot have—

Mr. THOMAS. I disagree with that, sir. Congress can have it both ways. Congress has had it both ways.

Mr. CUTLER. And conduct an inquiry which tells each witness in the independent counsel's investigation what all of the other witnesses have said. You might as well take the secret part of the grand jury and throw it away under those circumstances.

Mr. THOMAS. The independent counsel is through with this issue, and we are still going—have you ever written a letter like this before, the one you wrote on July 8, in which you said all documents must be maintained in a secure room and locked and guarded at all times, that access will be limited to a small number of designated staff members, that all will be required to have appropriate confidentiality agreements—a total of six conditions. Have you ever written one like that before?

Mr. CUTLER. Mr. Thomas, I have just been through this with Mr. Roth.

Mr. THOMAS. I understand.

Mr. CUTLER. Those are the committee's responses to our request for confidentiality until the hearing.

Mr. THOMAS. This is your letter.

Mr. CUTLER. This is our letter.

Mr. THOMAS. And I asked you if you have ever written one like that before.

Mr. CUTLER. Including the minority told us——

Mr. THOMAS. Have you ever written one like that before?

Mr. CUTLER. I dare say I have over the years, yes.

Mr. THOMAS. You have?

Mr. CUTLER. Yes. And it is perfectly appropriate to ask for confidentiality until a hearing begins to avoid all of the leaks out of context.

Mr. THOMAS. Of course, it is. But it is a little unusual to come over and have an armed guard standing there, isn't it?

Mr. CUTLER. That is the committee's idea; that is not my idea.

Mr. THOMAS. And you and the committee didn't have anything to do with the arranging together of how this hearing would be conducted?

Let me go on to something else. See if you recognize this. "There is generally no justification for any White House involvement, in particular adjudicative or rulemaking proceedings in any agency." Is that familiar?

Mr. CUTLER. Yes, I think I have heard that before.

Mr. THOMAS. "White House staff members should avoid even the mere appearance of interest or influence." I have notes here if you don't recall.

"As a general rule, no member of the White House staff should contact any independent agency with respect to pending adjudicative or investigative matter."

But then you say in apparently, or at least you are quoted in the *Wall Street Journal* as saying, "there are no violations of any ethical standard"; and "these are the ethical standards given by the White House."

Would you respond to that, please?

Mr. CUTLER. There are what are called the standards of ethical conduct, which appear in a big regulation issued by this non-partisan Office of Government Ethics. That is what I am talking about. I have said to you that I think the internal memoranda of the White House restricting contacts with law enforcement agencies on particular matters so that you cannot engage in them unless you have the approval of the White House counsel was not fully followed. I said that in my statement.

Mr. THOMAS. How could you conclude that that is not an ethical breach?

Mr. CUTLER. I said I thought it was inappropriate. That is different from violating a standard of ethical conduct. I passed on both.

Mr. THOMAS. You said in "Face the Nation" that you had no indication of any ethical breach.

The CHAIRMAN. The time of the gentleman has expired.

Mr. CUTLER. I said, and I stick to exactly what I said, there was no violation of any ethical standard, the standards of ethical conduct, and the nonpartisan Office of Government Ethics agrees.

Mr. THOMAS. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Mfume.

Mr. MFUME. Mr. Chairman, thank you.

Mr. Chairman, I know it has been stated today that no one wishes to harm anyone, and that it has been said by others that Whitewater is about the arrogance of power, about defending the Constitution, about the rule of law, and so forth. However, I would like to suggest to this body, which obligated its resources to this inquiry, to the media, which has detailed manpower, womanpower, and resources of its own, and to the viewing American public that if we, as a Nation, put as much energy and time into the issues affecting the people of this country, maybe we could do some of the things about those matters that are really before us that really count and that go to the heart of real and true service to our Nation. Many of those issues that scream for justice and resources, not for selfish purposes, but for the betterment of this country, oftentimes go unnoticed again and again by many.

Mr. Chairman, I don't mean to suggest that improprieties should not be addressed and readily dealt with when the public domain appears to be less than honorable. But let me say to the members of this committee and remind myself that this is not another Watergate. This is not another Iran-Contra. And with all due respect, I hope that we use the next hours and the remaining hearings so that members can ask the questions that they feel strongly about; and then at some soon point in time, move on. We really have to move on.

Mr. Cutler, just a couple of quick questions.

How is the President's name associated with the criminal referral and in what manner did that association occur?

Mr. CUTLER. Mr. Mfume, as I said earlier, we have never seen the criminal referrals. But we understand from the press and from Ms. Hanson's original heads-up to us that there were nine criminal referrals of various matters relating to Madison Guaranty Bank, which, of course, had hundreds, millions of transactions other than anything involving the Clintons, and that that referral included a reference to the Whitewater investment, which was a joint venture between Mr. McDougal and his wife and President Clinton—and Governor Clinton and his wife, and the possibility that funds of the bank, Madison Guaranty, might improperly have been put into that investment from the McDougal side, that was one item; and the other was that bank funds might have been used to make campaign contributions in a campaign funding drive that Mr.

McDougal organized and from which he sent a relatively modest amount of money to the Clinton campaign.

Mr. MFUME. Mr. Cutler, is there any evidence that anyone at the White House or the Treasury Department ever had a copy of the criminal referral?

Mr. CUTLER. No.

Mr. MFUME. And did anyone at the White House ever try to use their position to attempt to obtain a copy of the criminal referral?

Mr. CUTLER. No.

Mr. MFUME. Regarding the contacts that oftentimes have been talked about as violating and manipulating the regulatory system, was there any evidence that any of them actually manipulated or led to the manipulation of the regulatory system as we know it?

Mr. CUTLER. No. And I have read the testimony and the letter of the senior RTC nonpolitical career lawyer to that effect.

Mr. MFUME. And finally, sir, was there any evidence or is there any evidence that the President or the First Lady benefited financially from any of the contacts?

Mr. CUTLER. No.

Mr. MFUME. Thank you very much, Mr. Chairman. I yield back the balance of my time.

The CHAIRMAN. Thank you.

Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Cutler, I understand you were appointed as White House counsel in part to help clarify and further investigate the events leading up to and those occurring after the death of Foster, which is off limits.

I also feel it is imperative to mention that questions have been raised regarding some of the facts in Mr. Fiske's report, and some feel that some of those have been left out partially, if not completely.

I would like to point out your testimony this morning makes no mention at all about your own report and investigation, and you only mention Mr. Fiske's report. And I presume Mr. Fiske talked about more than Foster's death, about the RTC as well. And I wonder, have you ever had—at the White House met with Mr. Fiske and talked about these subjects?

Mr. CUTLER. Well, I think there is some confusion, Mr. Johnson. Mr. Fiske issued a big blue—

Mr. JOHNSON. I read it. You don't have to show it to us. I have seen it.

Mr. CUTLER. Mr. Fiske also issued, I believe, a 5-page report stating his conclusions about the—

Mr. JOHNSON. I read that, as well.

Mr. CUTLER. About the contacts. My report, which I was charged with doing by Mr. McLarty, is set forth in the chronology of all of the contacts back and forth that we have been able to learn about, which is attached to my statement, but which I did not read, and my conclusions are set forth in the statement itself.

Mr. JOHNSON. But you did discuss it with Mr. Fiske?

Mr. CUTLER. I did not discuss my conclusions with Mr. Fiske or my findings with Mr. Fiske. I have never had access to anything

Mr. Fiske has learned. He is an independent prosecutor taking testimony before a grand jury.

Mr. JOHNSON. But you did investigate at least the RTC portion of his report?

Mr. CUTLER. I read his report about the contacts, the 5-page report, yes, as all of us did.

Mr. JOHNSON. Yes. But weren't you charged to look into those matters yourself personally?

Mr. CUTLER. I was charged to look into this question of the contacts. We could not begin that until Mr. Fiske finished his investigation of the contacts. He asked us not to because he did not want one of his witnesses to know what another witness was testifying. And if we had been doing our investigation, that might have been possible.

Mr. JOHNSON. Sure.

Mr. CUTLER. He released us from that obligation something like 4 to 5 weeks ago, and during that period, we have been doing our investigation, as I have described.

Mr. JOHNSON. Well, the reason I am asking you some of this is because Mr. Baker's earlier comments about the blank pages that we have down here, so there is not much background to count on. Have you also looked into the Department of Justice contacts and have you talked with them?

Mr. CUTLER. No, we have not, because Mr. Fiske is an officer of the Department of Justice in his capacity as independent counsel pending whether or not he is going to be appointed by the court, as Ms. Reno has requested now that the independent counsel law has been reenacted, and we thought it was inappropriate for us to be talking to anyone at Justice.

Mr. JOHNSON. You stated earlier that in answer to the chairman's question that were the redacted documents provided to the minority, in other words, did we have a chance to look at those portions that were redacted, and you never answered that question.

Mr. CUTLER. A redacted document is in your hands. You look at the portion of the document you asked for. What you did not ask for and is not called for by your request is redacted. I must confess enormous surprise. Many of you are lawyers. Lawyers who have dealt with discovery and production of documents, trust one another to do ethical and honest redacting. We do that with one another. We take one another's word.

We appreciate our obligations as lawyers not to redact something that is relevant and called for by the request for documents, and that is what we did here. Now, Mr. Fiske gave us a somewhat different demand, but even with Mr. Fiske we have redacted. He doesn't come back and say I have to see what you redacted. We trust one another. That is what happens. And we need more trust in this country, sir.

The CHAIRMAN. The time of the gentleman has expired.

Ms. Waters.

Ms. WATERS. Thank you very much, Mr. Chairman.

Normally, I and others would begin our comments commending you for holding a hearing and praising you for having the wisdom and the foresight to organize us on a given subject. I do not open my comments that way. I find this hearing to be boring,

uninteresting, and uninformative. And I am sorry that we must spend our time here.

I have been in some great hearings in this committee, great hearings on housing, great hearings on financial institutions, as we dealt with issues like interstate banking, great consumer issues and credit and insurance and on and on and on. And I find that today we learn nothing.

As a matter of fact, everything that has been said here today I knew before I came here, not because I studied it, because I simply read it in the press. And speaking of the press, we all have press secretaries, and we use them in different ways. They must respond to the press, they try to make us look good.

Sometimes we have to do damage control. I can recall not too long ago I spent 1 week on damage control about a rumor that was being circulated by my friends from the other side of the aisle. I had to involve the Clerk of the House, House Administration, I had to call airlines, I had to query other Members on and on and on.

Am I to believe today that given information from the press to members of the White House they were simply supposed to sit in their seats, put their hands over their mouths and not try and find out where these inquiries were coming from, what they were all about and what they were trying to accomplish?

Would any member of this committee make anybody believe that should they get an inquiry about what would be inappropriate behavior or otherwise in their office, they would do nothing? They would not ask anybody, they would not try and find out where it started?

Am I to understand, if I must ask a question, Mr. Cutler, was any of this inappropriate, not criminal, not unethical behavior driven by inquiries from the press, to your knowledge?

Mr. CUTLER. When you say "driven," Ms. Waters, almost everything that is involved here ironically results from our efforts to respond to queries from the press. We were criticized by the press for not responding to their queries about Whitewater. When the criminal referrals occurred, the press came both to the Treasury Department and to us, they received leaks about the criminal referrals from somewhere, they had questions for us.

The Treasury folks met with us to confer on how to answer the questions, questions such as who endorsed the campaign checks, which only the White House would know if it could go back and find the gubernatorial campaign records. We tried to answer those questions. And now we are being criticized for this terrible, terrible thing of meeting with the Treasury to try to do a better job of answering the questions of the press.

Ms. WATERS. Case closed.

The CHAIRMAN. Will the gentlelady yield? She has about a minute or two.

I wanted to thank her for giving me credit for the hearing. But I think even the press universally says that maybe I had to be kind of dragged a little bit into it.

The truth is that we are operating under House Resolution 394. That is what we are working under, that mandate. And I have always said that when this august body known as the U.S. House of Representatives in duly enacted resolution says at noon that it is

midnight, I just go to the office and turn the lights on. That is where we are. We are following rigorously the parameters, the dimensions, the scope, of House Resolution 394; and I think everybody but about 15 voted for it.

Mr. CUTLER. Mr. Chairman, may I just take this moment of a lull to amend an answer that I gave to Mr. Bereuter earlier?

The CHAIRMAN. The gentleman may do that.

Mr. CUTLER. You asked, Mr. Bereuter, whether anyone on the White House staff had talked to anyone on the committee, or informed anyone on the committee, on either committee, about the so-called Altman diary entries of January. I thought that you were referring to the other officers of the White House staff; that is, the nonlawyer officers. My own team working on this investigation, Ms. Sherburne and Ms. Cheston and I have never had a copy of those diary entries. We have been informed of what is in them, and we did inform a member of this committee of what was in them, and he said he had already heard them.

Mr. BEREUTER. Thank you.

The CHAIRMAN. Thank you, Mr. Cutler.

Ms. Pryce.

Ms. PRYCE. Thank you, Mr. Chairman.

Mr. Cutler, I would like to direct my line of inquiry into some circumstances which might have some bearing on perhaps the veracity and forthrightness of our upcoming witnesses and the integrity of this process as a whole. As you are no doubt aware, there is a potential witness list for Thursday, and I would like to state that I have some concern regarding the now-popular use of legal defense trust funds. They center around these—these concerns center around what is the distinction between the First Family and other White House personnel.

Now, we know already that the Department of Justice was not consulted as to the legality of this trust fund, and I believe that you would agree that that has been their response. But some of my other concerns center around the fact that what distinguishes the First Family from other White House employees, who said that this was a legal entity and a legal thing to do.

The fact that if the President or his wife were to have access to funds from the trust fund left over after payment of the legal fees, this would perhaps constitute an illegal augmentation of their salary; the fact that according to the trust document, the President and his wife can remove the trustees at any time and that that gives them day-to-day operational control over a trust, and therefore, in my mind, it is not a trust at all; and the fact that lobbyists are permitted to contribute to this legal defense fund and the fact that the Clintons were not subject to additional tax liability as a result.

Mr. CUTLER. Mr. Chairman, please.

The CHAIRMAN. Will the gentlelady yield?

Mr. CUTLER. I believe this question is well beyond the scope of this inquiry, but I would like the privilege of at least correcting one point that Ms. Pryce—

Ms. PRYCE. Excuse me, sir, but I wasn't finished with my question, and so I don't know that you know—

Mr. CUTLER. You are making inquiry about a subject which is not within the scope of this committee.

Ms. PRYCE. Excuse me, sir, but I don't think you are in control of this hearing.

Mr. CUTLER. That is why I am appealing to the chairman.

The CHAIRMAN. Ms. Pryce, will you state your question?

Ms. PRYCE. All right. I will state my first question, and that would be, Mr. Cutler, is it your legal opinion that the legal defense trust fund that the Clintons have set up is legal? That just requires yes or no.

Mr. CUTLER. The answer to that is yes. But more importantly—

Ms. PRYCE. OK. Thank you. And can you tell me—

Mr. CUTLER. I would like to please give my answer, because you made a statement that is contrary to fact.

The CHAIRMAN. Will the gentlelady yield?

Mr. CUTLER. More importantly, this trust has a general counsel, Mr. Bernard Addinoff of the firm of Sullivan & Cromwell.

Ms. PRYCE. I am sorry, Mr. Cutler. I don't need these details to answer my question.

Mr. CUTLER. The Office of Government Ethics has ruled that it is a lawful and proper—

Ms. PRYCE. Do you have that in writing, sir?

Mr. CUTLER. Yes.

Ms. PRYCE. May I please have a copy of that?

Mr. CUTLER. It was published, I believe, late last week.

Ms. PRYCE. We have no record of that, and I would be happy if you could supply that to me.

Very well. Can you tell me if you believe that the Clintons will receive tax liability as the result of these funds entering into this trust?

Mr. CUTLER. Mr. Bernard Addinoff is one of the best tax lawyers in this country and he believes that there is no tax liability, and I suggest you ask him, and it has nothing whatsoever to do with this hearing.

Ms. PRYCE. And do you believe that the same tax treatment apply to other Americans, Mr. Cutler?

Mr. CUTLER. Yes, the answer is yes.

Ms. WATERS. Mr. Chairman?

The CHAIRMAN. The Chair must rule that the gentlelady is going beyond the scope of the hearing, and also the competency of the witness to answer those specific questions. And it may be that the gentlelady is correct in saying that we will have about nine witnesses Thursday; perhaps at that time the gentlelady may raise the issue.

Ms. PRYCE. Thank you, Mr. Chairman.

To preserve the record, I ask unanimous consent to just put my line of questioning in the record and then I would be prepared to move on.

The CHAIRMAN. There is no objection.

Ms. WATERS. Mr. Chairman? Inquiry.

Now, as I understand it, you set out the scope of the hearing, and everybody has been adhering to that. You made it very clear that we are dealing with the contacts that are under question.

Whenever anyone has stepped outside of that, you have ruled them out of order. And while you allow the gentlelady to continue without objection, I think it stretches it a bit to ask that they be placed in the record, and I would object, Mr. Chairman.

The CHAIRMAN. You will object?

Objection is heard.

Mr. BAKER. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. Proceed.

Mr. BAKER. Thank you, Mr. Chairman.

Just for the sake of proceedings in the days that will follow, I want to make sure that we have set ground rules today we understand. When the gentlelady was proceeding with questions, I respect the chairman's prerogative to point out that a matter may be outside the scope of the hearing, but I also wish to make clear, I believe it is the chairman's view that the time is controlled by the member. Should the member choose to cut off, restrain, or otherwise end an answer which is leading in an improper or inappropriate direction, the member controls the time that is allocated to this side, and it is up to the member to decide whether the witness should be heard from further. Is that correct, Mr. Chairman?

The CHAIRMAN. Well, the member, if—

Mr. BAKER. The time constraints do not apply to the witness, is that correct? The witness may go on at length at the chairman's direction. I would point out that on your side some have made statements and have asked no questions.

The CHAIRMAN. The Chair has even been understanding and allowed a member to complete a question that may be half finished at the time the red light goes on, allow him to complete it so that the witness can then answer.

Mr. BAKER. Mr. Chairman, you have been eminently fair and I am not asking this question in that vein. My only question is on the absolute control of the 5 minutes relegated to a member, will the member be in control of his 5 minutes?

The CHAIRMAN. Thank you.

Mr. BAKER. Thank you, Mr. Chairman.

Mr. FRANK. Maybe I should just disqualify myself because I am interested, we just have the usual right to be rude and abusive to witnesses, if we get into the mood.

Mr. BAKER. Pardon?

Mr. FRANK. I am just making clear that we have the customary right to be rude and abusive to witnesses.

Mr. BAKER. I never object when you do it.

The CHAIRMAN. The Chair wants to be very clear. The Chair has a responsibility of maintaining the decorum and dignity and protecting all of the rights of the witnesses, which are extensive under our rules. And I have done that scrupulously all of the time that I have held—

Mr. FRANK. Thank you, Mr. Chairman. I would say we can be rude, but not abusive.

The CHAIRMAN. Well, but the gentleman has raised a question here as to the propriety of abusing a witness. That won't be tolerated, nor submitting any other member to ridicule or contumely or embarrassment. The rules are plain. I am charged with respecting

those rights of the members and witnesses. So I just wanted to go over the rules to indicate that I read them.

Ms. PRYCE. Mr. Chairman, I would like to move the question on the objection. And I thank the Chairman. I do respect your ruling on the motion, and I ask for a division.

The CHAIRMAN. The gentlelady—

Ms. PRYCE. Shall I move to introduce the document?

The CHAIRMAN. No. The gentlelady made an unanimous consent request and an objection was heard.

Ms. PRYCE. And I move to introduce the document.

The CHAIRMAN. Since we have said that the documents pursuant to the gentlelady's questions that had been ruled outside of the scope of this hearing, the Chair would have to say that it will not recognize the gentlelady at this time for that motion.

Mr. LINDER. Mr. Chairman, earlier in this discussion, to make a point of order, you have made a unanimous consent request to which I objected and you moved the question. Why does she not have the same right to move to put the introductions into the minutes?

The CHAIRMAN. Because the Chair has ruled that whether it is through unanimous consent or otherwise, it is not germane.

Mr. LINDER. I appeal the ruling of the chairman and ask for a division.

The CHAIRMAN. Well, the gentleman is not recognized for that purpose either.

Regular order. Let's proceed with the witnesses.

I think, at this time, after the explanation has already been given twice, that even the number of witnesses we still have to hear from at a later date and at which time it will be determined as to the scope and propriety of the questions, I think anything now at this time is just merely an effort to obstruct, and the Chair will not abide by that.

Mr. ROTH. Mr. Chairman, this is not an effort to obstruct. This is a—could I ask a question of the Chair?

The CHAIRMAN. Is it a parliamentary inquiry?

Mr. ROTH. Yes.

The CHAIRMAN. State your inquiry.

Mr. ROTH. We have 31 Democrats on this committee and only 20 Republicans. When it comes—when the Republicans are done asking their questions, are we going to have only Democrats questioning then, or how are you going to proceed after that, if I may ask?

The CHAIRMAN. Well, that is regular order.

Mr. FRANK. No. You have Mr. Sanders.

Mr. SANDERS. Point of information. One Independent on this committee.

The CHAIRMAN. Let's not delay this. That is the general procedure. The rules provide that every member has his entitlement to his 5 minutes, no matter what the proportion.

Mr. LaRocco.

Mr. LAROCO. Thank you, Mr. Chairman.

Thank you, Mr. Cutler, for your statement.

Mr. Cutler, you have been around Washington for a long time; you have served in several administrations. On a scale of 1 to 10,

with 10 being the most serious breach, how would you compare this to Watergate, with Watergate being number 10?

Mr. CUTLER. Well, I would certainly call Watergate a 10 or maybe off the scale. I would call Iran-Contra for different reasons 10 or maybe a 9-plus. I would call this at most a one or a two.

Mr. LAROCOCO. Thank you, Mr. Cutler.

You mentioned in your testimony that Senator D'Amato had received a briefing by the RTC. Had any other Members of Congress requested a briefing by the RTC? And to your knowledge, were Senator D'Amato and his staff satisfied with the information that he received, and was a briefing available to all Members?

Mr. CUTLER. I believe that Chairman Riegle had a similar briefing at a later point, and I also believe that Senator D'Amato was satisfied with the briefing he got. I think everyone should remember the entire issue became mooted very shortly thereafter when Congress, by February 12, I think, passed and the President very promptly signed, the law that extended the statute of limitations in all cases until the end of December 1995.

Mr. LAROCOCO. The question has been raised, however, that the President received "special" briefings, and somehow there was special treatment for the President of the United States. Can you comment on whether Members of Congress had access to briefings as well?

Mr. CUTLER. Yes. And Senator D'Amato had been making speeches on the floor raising all of these issues for some time. So it was certainly public information that the statute was about to expire and that the RTC had various choices, either that it bring a lawsuit, or if it wasn't ready to bring a lawsuit, to request what lawyers call a tolling agreement, or to get the statute amended.

Mr. LAROCOCO. I want to help my constituents in Idaho know what a criminal referral is. Could you give me a layman's description of what a criminal referral is.

Mr. CUTLER. Yes, Mr. LaRocco. It is a memo, in effect, by some other agency of the government to the Department of Justice. Only the Department of Justice has criminal Federal law enforcement responsibility. And it will forward information which either the inspector general of that agency or some other group within that agency have received which lead them to believe there is a matter warranting further criminal investigation.

Those referrals then go to the Department of Justice, which analyzes them. Where it thinks the evidence is flimsy, it may terminate the thing very quickly; it may investigate at great length; it may find other leads; it may or may not indict somebody. The decision is always up to the Department.

But because of the magnitude of the number of S&L failures and the number of cases where one might find some sort of impropriety or mismanagement on the part of the management and the board of directors, there have been over 1,000 so-called criminal referrals to the Department of Justice by the FDIC and the RTC, of which only a very small number have resulted in criminal prosecutions, and I suppose even a smaller number than that have resulted in actual convictions. There was an earlier one involving Mr. McDougal in which he was indicted, but he was acquitted by a jury.

Mr. LAROCO. Is it possible that members of the press have a copy of that memo, if it is a memorandum?

Mr. CUTLER. Well, it is clear from what happened that members of the press were told about the memo, or at least something about the contents of the memo.

Mr. LAROCO. Has it ever been in the press? Has it ever appeared in the press or on television?

Mr. CUTLER. A copy of the criminal referral, as such?

Mr. LAROCO. Yes, sir.

Mr. CUTLER. No, not to my knowledge. I am not aware of anyone outside the RTC and the Justice Department who has ever seen it.

Mr. LAROCO. But you have never seen it.

Mr. CUTLER. I have never seen it. I can say categorically no one at the White House has seen it.

Mr. LAROCO. I had one other question. I think the criminal referral with the President's name in it was referred to by a Member of the minority earlier as an "investigative report." Is that a term of art, or do you think that they were referring to a criminal referral when they talked about an investigative report with the President's name in it?

Mr. CUTLER. Well, there was, if we believe the press, there was a series of criminal referrals, nine in all, by the RTC to the Justice Department relating to Madison Guaranty in the fall of 1993, one of which—I believe, incidentally, referred to two transactions, one of them being the real estate joint venture called Whitewater between the McDougals, who controlled this S&L, and the Clintons; and the other being some contributions written with Madison Guaranty checks to a Clinton gubernatorial campaign.

Mr. LAROCO. Thank you. My time has expired.

The CHAIRMAN. Mr. Linder.

Mr. LINDER. Thank you, Mr. Chairman.

Mr. Cutler, when you are finished with your 130-day stint here, are you returning to your firm?

Mr. CUTLER. I intend to, yes, Mr. Linder. I will have to rest after this.

Mr. LINDER. Are you being paid by the Federal Government right now.

Mr. CUTLER. No.

Mr. LINDER. Are you being paid by your firm?

Mr. CUTLER. The arrangement I have with my firm is I am no longer a partner in the firm, a share partner or anything like that. I have been a counsel for a number of years. I receive a salary. The only great advantage of that is I am no longer on the firm note with unlimited liability.

Mr. LINDER. So you receive—

Mr. CUTLER. And I have reduced my compensation from the firm by a percentage proportionate to the time I am spending in the government. So for this period I am spending in the government, I am not being paid either by my firm or by the government.

Mr. LINDER. On page 9 of your statement you inform us—for the first time, I might add—that the President and Mrs. Clinton were both told about the February 2 meeting by Harold Ickes. Yet, on March 7, the President said that neither he nor Mrs. Clinton was briefed on the meeting. Was he incorrect?

Mr. CUTLER. What the statement says, I believe, is that it is Mr. Ickes' recollection that at some point, the date of which he cannot remember, he did tell them about the question of recusal.

Mr. LINDER. You also said on that point——

Mr. CUTLER. May I please finish that. President and Mrs. Clinton do not recall any such conversation until the time that Mr. Altman actually recused, which is the February 25, and Mr. Ickes cannot remember the date.

Mr. LINDER. Are you asking us to believe that Mr. Clinton remembered being briefed by Bruce Lindsey in October regarding the criminal referrals and the two subsequent—and the two meetings in the fall, but he didn't remember being briefed by Mr. Ickes just several days before that?

Mr. CUTLER. Yes. The criminal referrals mentioning President Clinton were an important item of news at the time. Criminal referrals are criminal referrals, even though most of them never amount to anything in the end. Whether or not Mr. Altman was to recuse himself was not, to be very colloquial, that big a deal to a President who is dealing with the Middle East, with Korea, with——

Mr. LINDER. Let me move on to some other comments and get off the Middle East if we could. He says that Mr. Ickes says that he briefed them on the February 2 meeting on Mr. Altman's subsequent decision not to recuse, and I believe you said somewhere in answer to some questions that Mr. Altman had, he said, de facto recused himself already and informed Mrs. Kulka of that; is that correct?

Mr. CUTLER. That is correct. In other words, he was not acting on any RTC matter.

Mr. LINDER. Why did Mr. Ickes then draw the inference from the meeting that Mr. Altman in the February 2 meeting subsequent decision was not to recuse?

Mr. CUTLER. That is correct. One might draw the inference from that possibly that since Mr. Ickes' recollection is that he informed President Clinton of Mr. Altman's February 3 decision not to recuse, that it must have been before February 25, when Mr. Altman did recuse, but that was the President's recollection.

Mr. LINDER. Senator Kay Bailey Hutchinson just went through an expensive trial in which she was accused of using public employees for private work. We would have a problem if I did that in my office.

In your opinion, just a yes or no, did the President have the authority to use a Federal employee, Vince Foster, to do private work for a corporation in which he was a share holder?

Mr. CUTLER. It depends on what you are talking about.

Mr. LINDER. Tax returns.

Mr. CUTLER. When Mr. Foster came to the White House, he was just finishing up the sale of the remaining Clinton interest in Whitewater to the McDougals.

Mr. LINDER. He was doing private work.

Mr. CUTLER. He was also just finishing up the preparation of the Whitewater tax returns which Mr. McDougal had not filed. He finished those things.

Mr. LINDER. Let me ask you one thing.

Mr. CUTLER. Something which White House counsel I think have always done for Presidents.

Mr. LINDER. Mr. Cutler,—

Mr. CUTLER. I think you would find, in every Republican administration, you would find the same thing.

Mr. LINDER. You are using up my time. Let me ask you about Bernie Nussbaum's interview. If I hindered an investigation into a death, regardless of whether it was a suicide or a homicide, I would be guilty of an obstruction of justice.

Did you ask Mr. Nussbaum whether he intentionally hindered an investigation?

Mr. CUTLER. Once again, you have asked a question which has been ruled, I think at the beginning of the hearing, as beyond the scope.

Mr. LINDER. No, it hasn't.

Mr. CUTLER. Mr. Nussbaum did not hinder anything.

Mr. LINDER. I am not asking about the death; I am asking about Nussbaum's action. Did you ask him if he hindered the investigation?

Mr. CUTLER. We interviewed Mr. Nussbaum and we concluded that he acted perfectly properly.

Mr. LINDER. Did he say that—

The CHAIRMAN. The time of the gentleman has expired. The witness has answered the question.

Mr. Orton.

Mr. ORTON. Thank you, Mr. Chairman.

And, Mr. Cutler, I am over here on your left. We keep turning you back and forth. I hope you don't get dizzy.

It is a pleasure for me to greet you here this afternoon and have you respond to just a couple of questions.

But before asking the questions, I would just point out that one of the hallmarks of a witch-hunt is to raise allegation, innuendo, insinuation of terrible activities, obstruction of justice, criminal activity, and so on, and then as that is being stricken down and proven to be false, it is never acknowledged that the original allegation is false, and the attention is diverted to some other issue that is supposed to be this great issue proposed by rumor or insinuation, and so forth, and you never can really get down to the truth of any particular issue. And that we call a witch-hunt.

Mr. CUTLER. It used to be known as McCarthyism, Mr. Orton.

Mr. ORTON. It certainly did.

I believe that this committee and the bulk of this Congress do not want to conduct that kind of an investigation, and therefore we passed House Resolution 394 several months ago identifying how we would conduct these hearings, the scope of each hearing, step by step, how we would get through the entire process, and I am confident that we will eventually complete hearings on all aspects of the Whitewater investigation. I hope that we in this body can continue to focus on the scope of what we are here for within our jurisdiction.

Just to go back and recall a little bit of the history, it appears to me from information we have gathered, the RTC was going to send criminal referrals to the Justice Department; someone in the RTC most likely gave members of the press that information. Be-

cause members of the press were making inquiries as early as September about these referrals that had not yet even been issued, there were contacts made between the Treasury Department, RTC, and the White House to inform them of what was going on.

You and the special counsel have found that there was no criminal activity; you found no civil or ethical infractions either. But you did say that there were some meetings that perhaps shouldn't have been held, because they may develop an appearance of impropriety.

What I would like to ask you, and following up on Mr. Schumer and Mr. Kanjorski, you have told us the things that you are recommending at the administrative level to resolve that, so these things would not occur again. I would ask you to take one additional step beyond the administration and tell us at the legislative level if you believe there are any changes recommended or necessary, either to ethical laws, to the structure of the administration in structuring independent agencies, maybe RTC as an independent agency like the FCC or the FDIC or so on, or any kinds of regulatory changes.

Is there anything that this body should be doing, in your opinion, to ensure that these kinds of improperly appearing activities might not continue?

Mr. CUTLER. Well, I appreciate that question, Mr. Orton, but I think Congress has done its job of legislating in these areas. Congress has passed a great variety of ethics laws. Congress, at the recommendation of the commission on which I served, set up this Office of Government Ethics, a nonpartisan body that issues standards of ethical conduct and regulates. Congress is in the process of improving the ethical rules relating to its own conduct and the conduct of its members.

The one point I would make, it may sound strange, but I think it is terribly important, is that when people get caught up in this kind of an inquiry, either by an independent counsel or by committees like this, they are well advised to hire lawyers. The Department of Justice cannot represent them, even though the questions relate to their own conduct while in office. The costs of hiring those lawyers can take up 25, 50, 75, 100, 200 percent of their salaries, and they have no recourse. The only fund out of which they can hope to be reimbursed is if they become a subject, so-called, which is more or less not quite a target, but at least a subject of an independent counsel inquiry, and they are not indicted; then they have a basis for seeking reimbursement from the government with the approval of the special court.

I think there ought to be some way to be found in which individuals in the government who are caught up either as witnesses or subjects or whatever in a congressional hearing or an independent counsel investigation, could be reimbursed for their legal expenses. It is hard enough to go into the government and fill out all of these forms and observe all of these ethical rules and live on less money than you probably earned in private life. But on top of that, to have to hire a lawyer or run a very significant risk that you have to hire a lawyer and pay to him what you need to live on is really very unfair.

Mr. ORTON. Thank you, Mr. Chairman.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Knollenberg.

Mr. KNOLLENBERG. Thank you, Mr. Chairman.

Mr. Cutler, I have to admire your durability. You have been there for some time.

Having said that, I also have to say I am a little confused about some of the statements you have made with regard to the findings of your report. On the one hand—I want to try to paraphrase this as close to the real thing as I can—you say that the White House staff violated no ethical or legal standard prevailing under government regulations today, but on the other hand, you suggest there should be a number of reforms to ensure that something like this never happens again, whatever that is.

You also say that it is entirely appropriate for the Treasury Department to give the White House a “heads up,” that the Clintons would be named in an RTC criminal referral as benefiting from illegal activity.

If I take that, I try to translate that, because I am not an attorney—I am not a prosecutor either—but if I try to translate that, there were probably too many meetings with too many people and not enough lawyers. And maybe lawyers of the right level. And as I say, maybe you are right. I am not a lawyer. But my question has to do with—if I was a prosecutor, by the way, I would want to know if anyone in a case I was investigating knew what I was looking into, that I was looking into the case.

You have said there seems to be no problem with the heads-up briefing that the White House received from the Treasury officials other than the fact it should have been handled by the proper counsel. As a matter of routine policy, the RTC does not discuss criminal referrals with either people named in them or the press.

You know, back in June 1993—the date of this is June 17—the RTC did put together a directive that states all referrals are sensitive and should be handled with appropriate confidentiality and care.

Do you believe—this is my question—that the President deserves this treatment?

Mr. CUTLER. I believe the answer is yes, because the President is the Chief Executive, he is the sole repository of the executive power, including the power to conduct criminal investigations. He has to deal with everyone else in the government and he needs to know when an investigation is going on.

Mr. KNOLLENBERG. Should everyone in a criminal referral be given a heads-up?

Mr. CUTLER. I don't think that is a correct supposition. But everyone involved in a criminal investigation usually learns that an investigation is going on.

Mr. KNOLLENBERG. Why is Whitewater different? Because he is the President?

Mr. CUTLER. The President is entitled to know, I believe, and this has always happened. And the best example I can give you is the example of the independent counsel law, where the investigation was taken out of the hands of the Attorney General and put in the hands of somebody who is supposed to be independent.

The President, I can tell you from my experience, is always informed and needs to be informed so that he can deal with the inevitable questions. The President is the center of press attention.

Mr. KNOLLENBERG. I think we can all agree that the way the White House responded in terms of—the White House counsel responded to the criminal referrals in this case, was improper. I wouldn't go so far as to say Mr. Nussbaum was relieved because of that reason, but there are those who think so. In fact, when he received the criminal referral information from Ms. Hanson, why couldn't he simply have told her that all future press queries to the White House would be channeled to the Treasury, the RTC, and the Justice Department?

Mr. CUTLER. Neither the Treasury nor the RTC would have the answers to the questions. The questions came to the White House. Who endorsed the checks, for example, the campaign contribution checks. And everyone has been saying the White House should answer all these questions about Whitewater.

Mr. KNOLLENBERG. Did the White House know about the criminal referral before Justice? Do you know the answer to that question?

Mr. CUTLER. The White House was aware of press inquiries about the criminal referrals, which they were aware of, I assume, about the same time as Justice, because they were press inquiries. In fact, we now know, although most—I believe the White House people involved did not know at the time—we now know that what were reported to be these RTC referrals had been sent by the Kansas City office to Washington and not yet left Washington, but as I have said several times, the senior Washington career attorneys, the nonpolitical attorneys, said that everything went on exactly as it would have gone on if there had been no heads-up and that no effort was made to interfere with them.

Mr. KNOLLENBERG. Thank you.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Bacchus.

Mr. BACCHUS OF FLORIDA. Thank you, Mr. Chairman.

Mr. Cutler, pardon me if I seem a bit redundant, but we keep coming back to this notion of criminal referral. If I were listening out in America to our discussion about criminal referrals, I would have concluded by now that they have the same weight and gravity and drama as Martin Luther nailing the 95 theses on the door of the church at Wittenberg, or I would think in more contemporary terms, perhaps, they arrived at the Justice Department in a Brinks truck, with armed guards, that they were documents with dark scrolls, tassels. And yet, despite what I have heard on the other side, I seem to have recalled hearing you say a while back that a criminal referral is just a memo. Is that so, sir?

Mr. CUTLER. That is correct. I have to tell you I have never seen one, but presumably it is a memo with some evidence attached to it.

Mr. BACCHUS OF FLORIDA. Presumably, it is a memo with some evidence attached to it.

Again, while I realize you have answered this question before, let me ask it again. Have you ever seen this memo in this case?

Mr. CUTLER. No.

Mr. BACCHUS OF FLORIDA. To your knowledge, has anyone in the White House ever seen this memo in this case?

Mr. CUTLER. No.

Mr. BACCHUS OF FLORIDA. To your knowledge, has anyone in the Treasury Department seen the memo in this case?

Mr. CUTLER. Remember that the RTC is essentially within the executive branch and to some extent under the jurisdiction of the Treasury Department, but to my knowledge this will come out, I am sure, in the Treasury inspector general's investigation. But to my knowledge, at least, no one above the career people in the RTC has ever seen that memorandum until it went to the Justice Department where, of course, the Justice Department saw it.

Mr. BACCHUS OF FLORIDA. Thank you, sir.

Let me ask you about Mr. Altman as it relates to this memo. You said some time back that it was your conclusion that it would have been better if he had not brought it up with the White House. As I understand it, you were saying that this was your judgment of his judgment.

Mr. CUTLER. What I said is it would have been better if he had not brought up the issue of "should I recuse myself."

Mr. BACCHUS OF FLORIDA. I see. But you see no ethical violation by Mr. Altman or others?

Mr. CUTLER. That is correct. Indeed, he had an opinion from the Treasury-designated ethics officer, concurred in by the nonpartisan Office of Government Ethics, that he had no legal or ethical obligation to disqualify himself.

Mr. BACCHUS OF FLORIDA. And so far as you know, whatever he did had no effect at all on the dealings and the doings of the RTC?

Mr. CUTLER. He has testified that he left every decision relating to Madison Guaranty to the career, nonpolitical people, and they have confirmed that in their own letter to Mr. Leach and in their interviews with the Treasury inspector general.

Mr. BACCHUS OF FLORIDA. And as I understand it, by virtue of the law we passed sometime ago in Congress extending the statute of limitations, the RTC still has about 17 months left to decide what, if anything, it wants to do on the Madison Guaranty issue?

Mr. CUTLER. That is correct, or any other case involving any other S&L.

Mr. BACCHUS OF FLORIDA. And as far as I know, they will make that decision and make it on their own?

Mr. CUTLER. That is correct.

Mr. BACCHUS OF FLORIDA. Just how many of these memos float around America every year?

Mr. CUTLER. I have seen figures that the FDIC and the RTC have sent more than 1,000 of them to the Department of Justice. I have seen higher figures than that, but I don't know if they are accurate.

Mr. BACCHUS OF FLORIDA. Finally, to your knowledge, most are not even investigated, much less prosecuted?

Mr. CUTLER. Well, I am sure they are all looked at by the Justice Department, but a relatively low percentage are ever prosecuted.

Mr. BACCHUS OF FLORIDA. Thank you, Mr. Cutler.

Thank you, Mr. Chairman.

The CHAIRMAN. The witness has requested a 5-minute recess, and we will honor the brief recess for Mr. Cutler.

Mr. CUTLER. Are you recommending against it, Mr. Schumer?

Mr. SCHUMER. I was wondering if this was another part of the great plot.

The CHAIRMAN. No, it is just that—you have never heard this chairman ask for that request.

[Recess.]

The CHAIRMAN. The committee will please come to order.

And the Chair will recognize Mr. Lazio.

Mr. LAZIO. Thank you, Mr. Chairman.

Mr. Cutler, welcome back from Long Island, my home base. I hope you enjoyed your visit.

Mr. CUTLER. I try to get there every weekend.

Mr. LAZIO. Good. I wanted to begin, as a prosecutor, telling you how much I appreciate your role as the attorney for Bill Clinton and understand your desire to protect him. But I do have some concerns about the chronology of events and what that means with respect to your attempts to give him what you call a heads-up.

For example, according to my notes, and they might be incorrect—I invite you to correct them if they are incorrect—on September 27 we had Mr. Roelle of RTC telling Ms. Hanson of the referral. On the 29th, Hanson briefs Nussbaum and Sloan with respect to the referral. Later that day, it is either Nussbaum or Sloan that briefs Lindsey. On the 30th, Hanson calls Sloan. Later on, on the 30th, Sloan tells Lindsey again. And several days later, sometime on October 4 or 5, Lindsey briefs the President on a flight with respect to some of these matters, including the possibility, as published in some newspaper articles, that Jim Guy Tucker, the Governor of Arkansas, was a possible target of the probe.

Now, sometime later, about 2 days later, October 6, Jim Guy Tucker, this potential target, meets with Mr. Clinton as well as with his good friend from Arkansas and his Chief of Staff, Mack McLarty, and Webster Hubbell and, of course, this is a very significant meeting if it relates back to your desire to keep the President pristine and out of trouble, by giving him the so-called heads-up.

My first question is, did the President speak to Jim Guy Tucker about the matters that we now know as Whitewater?

Let me follow up with that and ask you a second question, if I might, given our time constraints. Did you ask the President whether he had such a conversation with Jim Guy Tucker?

Mr. CUTLER. I am informed that the President and Jim Guy Tucker did not discuss any Whitewater matters or anything related to these other cases during their meeting. I would like to correct some other things in the account you just gave.

Mr. LAZIO. Before you do that, if you will indulge me for one moment, would you explain to me how you were informed of that?

Mr. CUTLER. I was informed of that by Mr. Bruce Lindsey, who was told that by the President.

Mr. LAZIO. So just to clarify that point, you never asked the President directly whether he had any conversations regarding Whitewater with a potential target, Jim Guy Tucker?

Mr. CUTLER. That is correct. It is also correct that when Mr. Lindsey gave the President the information that these criminal re-

ferrals had been made, he did not know that Jim Guy Tucker was involved in them. He did not learn that, according to Mr. Lindsey, and he will be here before you, until I believe the 7th, the day after the meeting.

And all of this was simply from press inquiries.

Mr. LAZIO. By that time, as I understand it, the press had already reported that Jim Guy Tucker might be a possible target.

And I just want to clarify this again, that Lindsey did get a briefing based on summaries and not based on press stories with respect to the referral; is that correct?

Mr. CUTLER. He had a conversation on the 4th during which he does not recall mentioning Jim Guy Tucker. He learned from Mr. Sloan on October 7, after this meeting.

Mr. LAZIO. If I could ask one more question—

Mr. CUTLER. Because he did not tell the President of any reference to Jim Guy Tucker.

Mr. LAZIO. Doesn't this obliterate the whole rationale for giving a so-called heads-up, which we used to call a tipoff when I was a prosecutor? If you don't ask the President, protect him from a potential target,—

Mr. CUTLER. You are going backward.

Mr. LAZIO. Through press stories or through the official stories that he was an official target?

Mr. CUTLER. You cannot tell the President what you don't know.

Mr. LAZIO. How do you protect him?

Mr. CUTLER. He didn't know until the day after about Jim Guy Tucker. In any event, there was no conversation in the meeting having to do with Whitewater. And that is another way—

Mr. LAZIO. You don't know that for a fact. You never asked that question.

The CHAIRMAN. Mr. Sanders.

Mr. SANDERS. Thank you, Mr. Chairman.

Let me just make a few brief points and raise an issue that is of concern to me, and I don't believe it has been discussed today.

Number one, let me reiterate, I think there is concern, legitimate concern that we are not getting into all kinds of areas that the public is interested in. But I would simply remind members of the committee that the scope of this hearing is limited by House Resolution 394, which was supported by the overwhelming majority of the Members of the House.

Let me quote why probably all of us voted for that resolution, and that was to make sure that this hearing, quote, "would not interfere with the ongoing investigation of Special Counsel Robert B. Fiske," end quote.

In other words, there is more to happen. We are going to learn more. But I think we can all agree we don't want to interfere with the investigation of Mr. Fiske.

A second point that has been made, very important, basic point, is the special independent counsel, Mr. Fiske, Republican, has concluded his investigation of Foster's death, and the issue of the contacts between the White House, the Treasury, and the RTC. He has concluded that Foster committed suicide and also, and I quote, "that the evidence is insufficient to establish that anyone within

the White House or the Department of Treasury acted with the intent to influence an RTC investigation," end of quote.

The third point I think we are concerned about today, and that indicates that there were, in fact, as I understand it, over 40 contacts between the White House staff, the Treasury, and the RTC staff. And I think the bottom line is that the American people do want to make certain that charges against Madison Guaranty were treated by the RTC in exactly the same way that they would be treated if that bank had no connection to a man that was elected President.

Therefore, I think this hearing is appropriate and I think that it is useful. Although Mr. Fiske has concluded there is no basis for criminal prosecution, it is absolutely appropriate that we learn as much as we can from you in terms of those discussions and those contacts.

You yourself, as I understand it, Mr. Cutler, have called that, quote, unquote, "poor judgment," and we will want to know how we can prevent such behavior in the future.

Mr. Chairman, the issue I want to raise, and I know that Mr. Cutler is familiar with this issue, I don't believe we have talked about it today, and by no means am I making any derogatory statements about anybody on this committee, but what concerns me very, very much is there are individuals who on nationwide radio and television have disseminated unfounded accusations that I think nobody on this committee believes, and I am not suggesting that anybody does, but unfounded accusations that have gone so far as to even suggest that the President of the United States and Mrs. Clinton are involved in murder, are involved in thuggery, and in arson.

And these are not just little people who we are talking about—some little splinter group. These are people on national radio, national television making these statements. And I am very concerned about these types of vicious political attacks.

Now, to my mind what goes on there is not simply an effort to undermine the Presidency of Bill Clinton. That is what politics is about. That is the game we play. But what those people are doing, Mr. Chairman, is really undermining the faith of the American people in the democratic process.

I disagree—I am an Independent—I disagree with Mr. Clinton all the time. So do the Republicans. So do all of us. But if you have people speaking to millions of Americans who are saying that the President of the United States and Mrs. Clinton are involved in murder, are involved in arson, are involved in thuggery, and that is what millions of people are hearing, what are those people to believe about the U.S. Government? Why should they participate in the political process? Why should they vote?

This concerns me very much. So my questions to you, Mr. Cutler, are basically twofold. Number one, tell us in your judgment the worst example of what you referred to as poor judgment. There has been a lot of poor judgment. What is the worst?

And second of all, if you can say a word as to how the White House or how you are responding or feel about these outrageous allegations, which, again, I want to repeat, I believe nobody in this committee believes. Those are my two questions.

Mr. CUTLER. Well, with respect to poor judgment, Mr. Sanders, as I have said before, second-guessing after the event is always very easy. I wasn't there at the time and I am sure the people who were there acted in complete good faith.

But I think myself that the question of whether Mr. Altman should recuse himself was a question he should have decided without consulting the White House, and that it was too bad if the White House people involved indicated to him they rather hoped he wouldn't, they had a preference that he wouldn't. They may have had perfectly good reasons for that.

My own view is once the matter came up, it would have been better, and I believe what I would have done at the time is say, go ahead and recuse, that given the political and factual circumstances of Whitewater at the time, it would have been better to recuse, and we might not be here in this hearing today. I might still be practicing law instead.

With respect to these attacks on President and Mrs. Clinton, they have reached a level of invective and viciousness, if you will let me say that, that is unparalleled, a new low—level is probably the wrong word—a new low, unparalleled, at least in my experience in the government that goes all the way back to World War II.

I am sure there have been other periods in American history when other Presidents have been vilified, and we have survived it. But this seems to be very well financed. It is a cottage industry. There are a great many people apparently who would like to bring President Clinton down who will stop at practically nothing.

I talked earlier about trust. I really deplore the lack of trust of one party for another, of the public for the President, of the press for anyone in public office today. I think we have reached a low that should make us ashamed of ourselves. It is one thing for the press and anyone exercising first amendment rights to be able to say what he wants about an administration, and it is good for us.

But I come back, as I said the other day, to Mr. Joseph Welch's statement when he was counsel for the Secretary of the Army dealing with Senator McCarthy: "Have you no decency?" And I think it is something of which we should all remind ourselves.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Grams.

Mr. GRAMS. Thank you very much, Mr. Chairman.

Mr. Cutler, of course, thank you for coming today and presenting your testimony for us. What we have witnessed today was an impressive presentation by an impressive attorney about a less impressive client. Unfortunately, that client is the President of the United States and his administration, an administration that he promised would be the most ethical one in American history.

Now, for the next 2 weeks we must try to determine whether this administration, in holding White House/Treasury meetings over the Madison investigation, has met that standard or has even come close. We are not here to examine the criminality of such investigations. That has already been done by the Fiske investigation. We are here to determine whether White House/Treasury contacts involved unethical or inappropriate behavior.

That is just the beginning, because this hearing just represents the tip of the Whitewater iceberg. In fact, the total scope of this hearing covers less than 5 percent of the whole affair and does not allow us to even begin answering the questions surrounding Whitewater. Why did the Madison Guaranty fail at taxpayers' expense and how was the President involved?

If we are truly interested in restoring the people's faith in their government, we must begin by opening up the Whitewater investigation to full public scrutiny. And we can take a major step forward in this respect by again asking to make the documents on Whitewater public, without restrictions.

I also call today for full disclosure, and so should the President. Anything less would be a slap in the face for every taxpayer who paid for the \$60 million of Madison Guaranty with their hard-earned money and would leave in the minds of the American people an image of a government that has grown too arrogant, corrupt, and too out of touch with reality. We must use these hearings to answer the questions of who told what to whom and when did they tell them, or else the faith of the American people in their government will be the true casualty of Whitewater.

With that, Mr. Cutler, I am interested in learning how you and your staff read White House ethics laws. I would like to direct your attention to the chart behind me displaying White House ethics rules.

First, I would like to ask you, do you really believe that Harold Ickes and George Stephanopoulos, in calling Roger Altman and trying to remove Jay Stephens from the Whitewater-Madison case, did not violate number (c)(4), which is creating the appearance of losing complete independence or impartiality?

Mr. CUTLER. I really believe that. I believe that in the heat of the moment they expressed anger that the RTC had retained a political figure, a Republican political figure who had been an outspoken critic of the administration, a man I happen to know very well, who I think is a very good lawyer, but who was a political critic of the administration, who had just finished deciding whether he would run for the Republican nomination for the Senate in Virginia. And it was natural to let off a little steam on that.

Mr. GRAMS. Do you believe it was their role to do that?

Mr. CUTLER. I referred to Mr. Marlin Fitzwater, the Press Secretary for President Bush, who dismissed it as quite understandable.

Mr. GRAMS. But you believe that was their role as members of the White House staff?

Mr. CUTLER. They did nothing. And nothing happened. Mr. Stephens is still there. No effort was made to remove him. He is, presumably, doing his work.

Mr. GRAMS. Also, do you think, Mr. Cutler, that informing the President by a heads-up that criminal referrals had been made that would involve him and his wife as witnesses and conceivably as subjects of the investigation constitutes a violation of number (c)(2), and that is giving preferential treatment to any person?

Mr. CUTLER. I quite firmly believe it does not. I have said before, we have consulted the Office of Government Ethics which informally agrees with that conclusion. And I am telling you out of my

experience here over many years, this has happened in every administration, Republican and Democratic, because the President is the chief law enforcement officer and needs to know.

Even when the independent counsel law is invoked, before there is an announcement to the press that the Attorney General is seeking the appointment of an independent counsel, once he or she has made the decision, the President is informed.

Mr. GRAMS. Finally, you have admitted that the White House staff and others made errors of judgment that were regrettable and that should never have happened. You have said that too many people were talking to too many people on too many things.

Doesn't this suggest that the whole affair is a violation of number (c)(6), and that is affecting adversely the confidence of the public and the integrity and of the government? I don't think you can go to a coffee shop outside the Beltway that doesn't believe Whitewater has somehow let them down as far as their faith in the government.

Mr. CUTLER. If every administration that was criticized in the press or the public about affecting the confidence of the public, if we counted them up, we would count all 40 or 41 administrations to date. There has never been an administration which was not attacked in one way or another for affecting the confidence of the people and the government, yours or ours.

Mr. GRAMS. I am talking specifically about this language.

The CHAIRMAN. The time of the gentleman has expired.

Mr. CUTLER. If you read that language that way, every administration has violated the standard of ethics.

Mr. GRAMS. They are not the subject of this hearing.

Mr. CUTLER. In other words, if you become subject to criticism, you have violated the standards of ethics.

The CHAIRMAN. Mr. Klein.

Mr. KLEIN. Thank you very much, Mr. Chairman.

First of all, Mr. Cutler, I welcome you. As one who has spent my entire life dealing with the facts, I have looked forward to this hearing with a good deal of anticipation, not because I thought it would be pleasant, but simply because I believe very much in candor, in open government, and in openness wherever possible.

And I thought that this hearing would be an opportunity to get out some additional facts that the American people would want to know. I do not deal in innuendo and I don't think that dealing in innuendo really gets us very far.

I just say that I came to this hearing with a totally open mind as to what it would show. And, obviously, you are only the first witness. There will be other witnesses to follow.

But, certainly, your testimony and the report that you made, and I am very impressed with the thoroughness of that report, plainly indicates that there is no criminal wrongdoing, that there is no unethical conduct of any kind, and that all we have are errors in judgment. I thought that some of the many, many questions that I would have heard up until now from those who are obviously partisan and obviously adversarial in their questioning would have revealed some semblance of fact to contradict the main thesis of what you have said. But I must say I am deeply disappointed that I have heard no such facts.

Turning to the question of mistakes, and I think, as Mr. LaFalce pointed out so very, very well, we all make mistakes, some more serious than others. Some mistakes are of such seriousness that appropriate measures should be taken, and I think you have taken measures with respect to correcting those mistakes which are the result of procedural inadequacies in the White House office. I think you are to be commended for that.

You were asked, what were the errors in judgment, and the only one you cited was the one of recusal. And I will tell you that I share with you completely the feeling that it would have been much better had there been an immediate recusal by Mr. Altman, and it would have been much better if the White House, and no member of the White House staff had attempted to urge him to do otherwise.

Nevertheless, even the recusal issue is one in which Mr. Nussbaum acted out of a sense, albeit perhaps misplaced, that a recusal under these circumstances would set a precedent that would make it difficult for other officers to conduct their duties effectively. Is that not so? And I wonder if you can elaborate on that.

Mr. CUTLER. That is correct, and Mr. Nussbaum is coming here to testify before you, I think, on Thursday morning, and he makes a very convincing, persuasive, good faith argument for what he is saying. And I am sure the argument he makes is taken in perfect good faith.

Mr. KLEIN. And in any event, regardless of whether he is right or wrong, he obviously had a well-intentioned motive for so doing.

Mr. CUTLER. As I said, I think he believed then and believes now that what he was doing was serving the interests, not just of President Clinton, but the interests of the country.

Mr. KLEIN. Now, I wanted to ask you a question about the October 14 meeting. That meeting did deal with the subject of the criminal referrals, and there was one of the many contacts, and I think you have noted that you felt there were far too many contacts, and that is part of the errors in procedure or judgment that had occurred.

Mr. CUTLER. This particular one, it seems to me, was rather harmless. I think it is the later contacts referring to the statute of limitations and the recusal issue that raise more problems. But this was a meeting of press people, started by press people, to deal with inquiries that were rolling in at a time when Whitewater was heating up as a public subject, and the White House and the Treasury were being asked for information. They were being criticized for not giving information.

They were only trying to alert one another to the queries they had so they could deal with them. And now, as I said earlier, they are ironically being accused of having had an improper meeting in order to get out more and more accurate information to the press.

Mr. KLEIN. Thank you. I believe my time has expired.

Mr. Chairman. Thank you very much.

The CHAIRMAN. Yes, it has. Mr. Bachus.

Mr. BACHUS OF ALABAMA. Thank you, Mr. Chairman. Mr. Cutler, do you have any knowledge of any communications between people at the White House and Paula Casey concerning Madison Guaranty?

Mr. CUTLER. No, I have no knowledge of any such communications.

Mr. BACHUS OF ALABAMA. In your investigation, did you ask whether there were any communications?

Mr. CUTLER. We certainly asked the White House people whether they had any communications with anyone in the Justice Department, yes.

Mr. BACHUS OF ALABAMA. And you were told there were no such communications?

Mr. CUTLER. No, I referred to what we were told by Mr. Nussbaum relating to the two conversations he had concerning the appointment of an independent counsel, one with Mr. Hubbell, who was totally disqualified, and the other with Judge Freeh, who was a personal friend.

Mr. BACHUS OF ALABAMA. But no knowledge of any communications concerning Paula Casey?

Mr. CUTLER. Correct.

Mr. BACHUS OF ALABAMA. Second question, you were appointed March 8?

Mr. CUTLER. My appointment was announced March 8. I began working on March 10. I started fulfilling the duties of the counsel to the President about April 1.

Mr. BACHUS OF ALABAMA. According to ethical standards, you were appointed and can serve for a period of 130 days from March 8; is that correct?

Mr. CUTLER. I have consulted the ethics officer in the Department in the White House, Mr. Bachus, and I am told that according to the OPM Federal Personnel Manual, chapter 735, appendix C, all you need to do is make a good faith estimate of the number of days you are going to work. If you make a good faith estimate of 130 days and you run over a little bit, it is not like Cinderella's coach. It doesn't turn into a pumpkin. That is the advice I have received from the ethics officers.

Mr. BACHUS OF ALABAMA. Have you got a copy of that opinion?

Mr. CUTLER. I have cited it to you and I will supply you with a copy.

[The information referred to can be found in the appendix.]

Mr. BACHUS OF ALABAMA. I would point out to you the Code of Federal Regulations contains a 130-day restriction.

Mr. CUTLER. This is the interpretation of the 130-day restriction, and I believe it has never been rescinded.

Mr. BACHUS OF ALABAMA. Let me ask you this, about the ethics regulations Mr. Grams referred to, which deals with giving preferential treatment. I think you talked about important persons, compromising the independence or the impartiality of an agency, or making a government decision outside the official channel, all as violations of ethical conduct.

You have reviewed the Steiner diary, the two pages we were supplied, have you not?

Mr. CUTLER. Yes.

Mr. BACHUS OF ALABAMA. Have you seen the various references in there to the White House pressuring Roger Altman not to resign?

Mr. CUTLER. Yes. And that is based, I take it, on conversations between Mr. Altman and Mr. Steiner, who recorded his impressions a week or two after the event. Both Mr. Altman and Mr. Steiner now say there was no pressure.

Mr. BACHUS OF ALABAMA. So when he wrote in his diary that Roger was under intense pressure from the White House not to recuse himself, he now doesn't—

Mr. CUTLER. Mr. Altman denies that and Mr. Steiner, as I understand it, as you can read in this morning's *New York Times*, has given a different interpretation of it himself.

Mr. BACHUS OF ALABAMA. On the second occasion about a month later, he wrote in the same diary that the White House was very negative in the meeting he had with him about him recusing himself. There again, they now have no knowledge of that.

Mr. CUTLER. You are going to have, I assume, both Mr. Steiner and Mr. Altman as witnesses.

Mr. BACHUS OF ALABAMA. And there is another entry which says they didn't want him to resign because they didn't want the RTC operation turned over to someone they didn't know. Do they now deny that that happened?

Mr. CUTLER. Mr. Nussbaum will be here to tell you exactly what he said, and I related it in my prepared statement.

Mr. BACHUS OF ALABAMA. You are aware of the Steiner entry?

Mr. CUTLER. I am aware of what is in the Steiner diary. But I am also aware of what both Mr. Steiner and Mr. Altman say.

Mr. BACHUS OF ALABAMA. If we take these entries in the diary as correct, that would be a violation of these ethical codes?

Mr. CUTLER. I don't know that it would be, but I have not looked into that matter. I have looked into it as far as the White House people are concerned, and I am satisfied that it did not violate any government standard of ethics for the White House people; and the Office of Government Ethics has agreed informally with that.

Mr. BACHUS OF ALABAMA. Could I just have one clarification of what you testified to? You have stated, I think, today that the Non-partisan Office of Government Ethics has rendered an opinion saying that the White House staff are not guilty of any ethical violations, is that right?

Mr. CUTLER. Well, I can read it to you precisely, but they have informally concurred in our conclusion. Let me just read it to you.

Mr. BACHUS OF ALABAMA. And the reason I say that is I just had a staff member call over to OGE and they say that their study, that it deals with the Treasury and the RTC, and not with the White House, and that it is not completed. And I am just wondering how you are getting, if the report hadn't been issued or completed, how you are getting—

Mr. CUTLER. They have not yet expressed an opinion as to whether the Treasury people did or did not comply with these ethical standards.

The CHAIRMAN. The time of the gentleman has long expired.

Mr. CUTLER. If I may just complete my answer, Mr. Chairman.

They did advise us based on factual information we have given them about the White House people that they concur informally in our judgment that the White House people did not violate any of

these standards. What they have said I have put precisely in the statement I have read.

The CHAIRMAN. The time of the gentleman has expired.

Mrs. Maloney.

Mrs. MALONEY. Thank you, Mr. Chairman. Mr. Cutler, in today's *Washington Post* there is an article on Whitewater entitled, "Questions Just Kept Growing." In the article it mentions Ms. Hanson and states that she has testified before congressional investigators that she was instructed by Mr. Altman to meet with the White House staff and inform them of the Madison probe.

Mr. Altman in this article contradicts her and states he made no such instruction and does not recall ever having instructed her to do so. My question to you is, even if he had made such an instruction, would it have been illegal?

Mr. CUTLER. I believe the answer to that is no, that while the two of them do differ in their recollections, the meeting, the heads-up itself, was perfectly proper under these ethical standards that I have referred to, and that is something I believe in which the Office of Government Ethics does agree; and it doesn't matter whether Ms. Hanson did it on her own or whether she did it on Mr. Altman's instructions or whether she told Secretary Bentsen about it or not.

Mrs. MALONEY. Are you aware, Mr. Cutler, of anything unethical or unlawful that George Stephanopoulos has done?

Mr. CUTLER. I am not aware of anything unethical or unlawful that George Stephanopoulos has done. I think his letting off steam to Mr. Steiner is impetuous, as many Republicans have said.

Mrs. MALONEY. Are you aware of anything unethical or unlawful that Harold Ickes has done?

Mr. CUTLER. No.

Mrs. MALONEY. Are you aware of anything unethical or unlawful that Roger Altman has done?

Mr. CUTLER. No.

Mrs. MALONEY. Are you aware of anything unethical or unlawful that Margaret Ann Williams has done?

Mr. CUTLER. No.

Mrs. MALONEY. Are you aware of anything unethical or unlawful that Mac McLarty has done?

Mr. CUTLER. No.

Mrs. MALONEY. Are you aware of anything unethical or unlawful that Cliff Sloan has done?

Mr. CUTLER. No.

Mrs. MALONEY. Are you aware of anything unlawful or unethical that Bruce Lindsey has done?

Mr. CUTLER. No.

Mrs. MALONEY. Are you aware of anything unethical or unlawful that Neal Eggleston has done?

Mr. CUTLER. No.

Mrs. MALONEY. In Mr. Fiske's examination, did Mr. Fiske include in his evaluation testimony from everyone? Did it include all of the testimony?

Mr. CUTLER. Well, Mr. Fiske had both a grand jury and interviews and depositions depending on the particular person he wanted to talk to. He had access to everyone he asked to have access

to in the White House. No executive privilege was asserted. And he did depositions of the President and Mrs. Clinton, among others.

Mrs. MALONEY. And he stated that there was nothing illegal. Is it fair to conclude that none of the testimony was not proper or illegal, or—that he reviewed?

Mr. CUTLER. Of course, we have no access to what was said to Mr. Fiske. We never get to see grand jury records or depositions or anything like that. But Mr. Fiske was evidently satisfied with the cooperation he had received from the White House witnesses relating to the subject of contacts, and came to the conclusion, which he has announced, that there would be no basis for going forward with criminal charges against anyone.

Mrs. MALONEY. Thank you very much.

The CHAIRMAN. The gentlelady has completed her——

Mrs. MALONEY. Yes, I am.

The CHAIRMAN. Mr. Huffington.

Mr. HUFFINGTON. Mr. Cutler, welcome to the Whitewater hearings. Nice to see you again.

Mr. CUTLER. Nice to see you. Thank you.

Mr. HUFFINGTON. I have a statement I will be making, and then I have a couple of questions.

Our system of government is a system of checks and balances, a basic premise to ensure that the actions of each branch of government must comply with the spirit and the letter of both the Constitution and our body of laws. And when that public trust is broken, the other branches of government have an unbreakable duty to disclose that violation and act accordingly.

Unfortunately, these hearings are deliberately structured and managed to prevent Congress from carrying out its constitutional duty to find the truth. The American people have many questions about the failure of Madison Guaranty Savings and Loan, the dubious business practices of the Whitewater Development Corp., and the entanglement of several individuals who now hold senior positions in this administration.

And Americans should be concerned. At the very least, this savings and loan's failure cost the American taxpayers tens of millions of dollars.

The American people also have questions about the handling of key documents and the trading of confidential information in the last couple of years. As confusing as this whole issue is, the American people know that a regulatory agency investigating the dubious business practices of a failed savings and loan should not provide briefings on the investigation to individuals implicated in the investigation. This is nothing more than the Washington political equivalent of insider trading, and it is just plain wrong.

We can't get to the bottom of any of that. Nearly every stage of this investigation from witness interviews to access to relevant documents has been made more difficult by those involved. Indeed, the documents themselves offer a perfect example of this preoccupation with covering up the events in question.

These grossly inadequate documents do not contain information related to national security, nor do these documents contain classified information. Instead, these documents merely provide the tiniest glimmer of the improper activities of staff members in an

administration which alleges itself to have the highest level of ethical behavior.

Access to these documents has been difficult at the best of times. If you make it past the armed guard and past the confidentiality requirements, you can review all these papers in their redacted form. Information has been liberally removed for no good, and the interview notes that show memories appear to have become unresponsive to many important questions.

It is clear, given the clouding of facts at most turns, that the participants are far more concerned with creating an illusion of cooperation than with the actual disclosure of the truth.

What then will be the result of these hearings? These proceedings are so limited in scope that not even 5 percent of the total subject matter will be considered. I am afraid that probably very little will actually be learned, except that the American people will be given a glimpse into the dark heart of institutionalized Washington.

Men and women in everyday America will be reminded once again that the ever-expanding government in their Nation's Capital is not here to serve them but to serve and protect itself. I suggest that the American people won't be fooled by the charade this committee will play over the next few days. They know that the fragile, battered trust they have in the Federal Government has once again been broken, and they are going to find out who is responsible.

Mr. CUTLER, I wanted to ask two questions. Were there any meetings between you and the White House staff with members and/or staff of this committee in which discussions included the questions which a member of this committee might ask?

Mr. CUTLER. We have met with any members of this committee who would be willing to see us, yes.

Mr. HUFFINGTON. And is it true that a professional public relations firm was brought in to prepare you and your office for this hearing?

Mr. CUTLER. I am not aware of any such event, Mr. Huffington.

Mr. HUFFINGTON. The reason I ask is, the Associated Press put out a release to that effect. They may or may not be correct. But you don't believe it is true?

Mr. CUTLER. Well, I don't recognize it, from what you are saying, Mr. Huffington.

Mr. HUFFINGTON. And my question would be if there was any group that, then, was brought in from the outside, not from the government, to help you or any other members for this interview.

Mr. CUTLER. Well, fair is fair. I assume the Republican members of this committee have plenty of outside help.

I just want to make one more statement, if I can, Mr. Huffington. I have been over this matter of redaction before. Your attack on me personally about redaction, which is the only way I can interpret it, surprises me a great deal in the light of our past relationships.

Mr. HUFFINGTON. I assure you, as I said before, it is not personal.

Mr. CUTLER. It is not personal, it is just politics.

The CHAIRMAN. The time of the gentleman has expired.

The Chair, for the record, will state that there are 44 majority and 33 minority staff members eligible to see all documents, plus

all 51 members of this committee, 128 persons in all. Hardly a roadblock against full and free access to information relating to the investigation.

Mr. BAKER. Pardon me, Mr. Chairman.

The CHAIRMAN. Further, I heard repeatedly about percentages—2 percent, 4 percent, and even 5 percent. And I have engaged the help of a friend of mine that studied mathematics with me and who is now a physics Chair, and we have arrived on the basis of a mathematical approach by Shumutov's formula of median averages, of 18.75 percent, not 5 percent, but 18.75 percent.

I just thought I would clarify that.

Mr. BAKER. Mr. Chairman, parliamentary query. On the subject of staff having full access, is it your statement that redacted portions of material may be available for members of this committee?

The CHAIRMAN. Well, everything within the scope has been provided, and I will remind the gentleman that when we had the BNL hearing, we had a document that was a plain sheet of paper and said, "fully redacted." We didn't raise any issues about it, we just went on what we were able to get and did get, and also witnesses.

So I would say to the gentleman, if he has named anybody on his staff, or himself, will realize that if there were any questions related, or if any of the staff of the full committee had related to me that in pursuance of their request, that redacted information was related in an improper manner, we would have pursued it; but at no time was that issue ever brought up as far as the legitimate scope and germaneness of the inquiry.

Mr. BAKER. Just as a followup on that point, Mr. Chairman, I will be very brief. You have been very patient today.

The CHAIRMAN. I appreciate that.

Mr. BAKER. I know you will.

I, for the sake of clarity, am going to have a staff person deliver directly to Mr. Cutler a request for the redacted documents I have in question. I will leave it to you, Mr. Cutler, and an appropriate staff person, if you choose, to respond. If you tell me, no, I will live by that decision. But I want to clear it up, what is and what isn't in play.

Mr. FRANK. Mr. Chairman? Mr. Chairman, parliamentary inquiry.

Has anyone explained to the American people that "redacted" means crossed out?

Mr. BAKER. Yes, it means left and forgotten, buried, whatever.

The CHAIRMAN. Well, let me reply to Mr. Baker's inquiry.

Mr. Baker, you and your staff have had that, and I am sure that whatever is the proper answer will apply.

Let's proceed. The Chair will recognize Mr. Deutsch.

Mr. DEUTSCH. Thank you, Mr. Chairman.

And thank you, Mr. Cutler. In 1990, in response to a comment that U.S. attorneys occasionally discussed criminal referrals, then Attorney General Thornburgh stated that it was not unusual to discuss them, because—and I quote, "If they are a matter of public knowledge because of unauthorized disclosure, oftentimes in fairness to the parties, you have to deal with them."

In terms of the issue of referrals and knowledge of the parties involved, could you follow up both on Attorney General

Thornburgh's statement, and discuss any other instances where this would be the normal procedure by investigatory agencies?

Mr. CUTLER. Well, it is the normal procedure, I believe, at the RTC and elsewhere, not to make a public announcement of a criminal referral to the Justice Department in fairness to the people concerned, because the criminal referral is such a preliminary stage of what may become a criminal investigation.

I am not familiar with that particular statement of Mr. Thornburgh's that you referred to, but when such a referral relates to a high government official, it is quite customary, I believe, from my own experience, for the referring agency or the Department of Justice, either one, to let the President know, so that he will be able to conduct himself accordingly, even when it is a matter related to him or one of his close personal aides. That doesn't mean they are giving him the details; they are simply saying, something has just come in and you should know about it. It doesn't mean that he should interfere with it; he can't and he shouldn't interfere with it. But he needs to know it, and that is the custom.

Mr. DEUTSCH. Let me just follow up on that specifically in a sense that applies to this case. At the end of September and at the beginning of October, did it appear that the press had very specific information on the referral?

Mr. CUTLER. Yes. It was quite clear late in September that press inquiries were beginning, and in the beginning of October, that the press had received leaks presumably from someplace in the RTC, about the nature of the criminal referrals and in particular, the incidental references to President and Mrs. Clinton.

Mr. DEUTSCH. And the disclosure was made to Mr. Nussbaum due to concerns about the leaks to the press. Did the leaks occur at the same time as the initial contact by Jean Lewis in the White House?

Mr. CUTLER. When you say by Jean Lewis and the White House, I don't follow.

Mr. DEUTSCH. And the White House at the same time.

Mr. CUTLER. I don't know of any contact between Jean Lewis and the White House. It was Jean Hanson who had a contact with the White House. Is that what you meant, Mr. Deutsch?

Mr. DEUTSCH. Yes, in terms of Jean Hanson.

Mr. CUTLER. Within a day or so of the contact, yes. And it was concern that there would be leaks that led Ms. Hanson to give Mr. Nussbaum the "heads up."

Mr. DEUTSCH. Did Sue Schmidt of the *Washington Post* specifically call the RTC on or before September 30 to inquire about the referral?

Mr. CUTLER. I know that Sue Schmidt did inquire. I will have to check with my colleagues on whether it was on or before the 30th.

We believe it was no later than September 30; it may have been before that.

Mr. DEUTSCH. And was the purpose of the meeting on October 14 to discuss or request information about the referral that named the Clintons as witnesses?

Mr. CUTLER. It was to discuss the queries that were pouring in from the press by that time on how to answer them.

Mr. DEUTSCH. And at that point Jeff Gerth of the *New York Times* asked Treasury spokesman Jack DeVore about very specific details of the referral, thereby demonstrating that there had been a very substantial leak from the RTC to the media.

Mr. CUTLER. Yes, and you will find all of that laid out in detail in this chronological summary attached to my statement.

Mr. DEUTSCH. And as I understand it, the referrals were made before the October 14 meeting; there had never been any attempt to stop the referrals from being made at any point?

Mr. CUTLER. That is correct.

Mr. DEUTSCH. In your examination of White House personnel, did you come across anyone who had seen either of the criminal referrals?

Mr. CUTLER. No, I have not seen them myself.

Mr. DEUTSCH. Did you come across anyone who had destroyed documents related to either referral?

Mr. CUTLER. No.

Mr. DEUTSCH. Did you come across anyone who had contacted either the RTC, the Treasury, or the Justice Department with the intent of preventing consideration of referrals?

Mr. CUTLER. No.

Mr. DEUTSCH. Did you come across anyone whose communication had the effect of obstructing consideration of either criminal referral?

Mr. CUTLER. No.

Mr. DEUTSCH. Thank you, Mr. Cutler.

The CHAIRMAN. Mr. Castle.

Mr. CASTLE. Thank you very much, Mr. Chairman. It has been an interesting day, as we come to the end of the day—as far as Republicans are concerned at least.

You concluded that we have 18.75 percent of Whitewater here by a formula I have used myself, Mr. Chairman, from time to time. We have heard 5 percent, and yet we took the Foster suicide and the handling of the Foster papers off, so I conclude it is perhaps 1.67 percent we are dealing with. But in any event, I think all of us conclude that it is something less than the full scope of whatever is Whitewater.

Ms. Waters made the point that it is sort of boring and uninformative, and that is probably as it should be. We have you as a distinguished attorney, but just as you are the attorney in a trial for a criminal defendant or a plaintiff, testifying first and being sort of the prosecutor and the judge and everything else, so we would expect you to say the things that you have said.

Let me ask you this question. Would you agree with me that if we really are going to get Whitewater out some day and have the American people really understand what we are dealing with, should we not at some point, when it is appropriate—and it is not now, when it is appropriate, when Mr. Fiske is done, and so forth—have a hearing on the full scope of everything in Whitewater, and then we are dealing with 1 percent or 18 percent or anything of that nature?

Mr. CUTLER. If the public is not bored to death with Whitewater by that time—

Mr. CASTLE. That could be true, too.

Mr. CUTLER. If the murky and complicated facts of a real estate transaction over 15 years are something the public is sufficiently interested in to try to follow, and Congress wants to hold a hearing, of course, we will get to the bottom of all of that; and the President and Mrs. Clinton will certainly cooperate. Mr. Fiske is still investigating that part of the matter, as you know.

Mr. CASTLE. May I go on? I hate to do this to you, I really do, but unfortunately you have 5 hours; I have 3 minutes left, I suppose.

You concluded that obviously nobody is guilty of ethical problems, as well as the criminal problems that Mr. Fiske found, but this really pertains to the White House personnel, your conclusions.

Now, you said that you spoke to lawyers for Altman, Steiner, and Ms. Hanson and I think most of the public would think that lawyers speaking to lawyers isn't a very good conclusion of whether somebody was unethical or not, not that you are not—you are highly ethical.

But my question to you is, you did not really talk to outside witnesses, did you, in terms of beyond the White House, in terms of their ethics or what they may have done?

Mr. CUTLER. We did talk both to Mr. Steiner and to Mr. Altman directly, and as I said, we have read the transcripts of the Treasury inspector general, of all of the other Treasury people, and we have given them access to our people. But it is not my mission to pass judgment on them; that is being done by the—Mr. Bentsen directed his Office of Inspector General to find the facts and then send them over to the Office of Government Ethics.

Mr. CASTLE. Thank you. So your work—

Mr. CUTLER. It is in the process, yes.

Mr. CASTLE. You have indicated that there may have been inappropriate behavior, saying that there may be too many talking; far too many contacts. How many people do you think were involved in contacts between the White House, Treasury, and RTC officials in the course of all of this time, and how many different types of contacts do you think there were; meetings, telephone calls, or whatever?

Mr. CUTLER. I have counted up about 12 White House people, 6 of whom are in the counsel's office, which I think would be perfectly appropriate, and 6 of whom were outside the counsel's office. As to the number of contacts, you can—I have not done an exact count, but all the ones we know about of any significance are detailed in the chronology, and they are above 20. I would believe there were probably 30, or in the low thirties, but I haven't done an actual count.

Mr. CASTLE. I have been told that there were between 40 and 50 counted by staff—I don't know this myself—between 40 and 50 contacts among White House, Treasury, and RTC officials involving 40 different officials. That is fairly broad, is it not, in terms of at least a whole series of contacts for no ethical conclusions?

Mr. CUTLER. I believe there were too many and that they were not properly channeled through the lawyers.

Mr. CASTLE. It seems to me as you get to more, then you have a greater problem; I guess we would all agree on that with respect to that.

Mr. CUTLER. We would all agree, of course.

Mr. CASTLE. The *New York Times* editorial said today, the one that has been referred to several times—you probably read it several times—the changing stories of the participants show they were not innocuous. Deputy Treasury Secretary Roger Altman, for example, was serving as the Acting Head of the RTC, which was supposed to be politically independent at the time that he was talking to Mrs. Clinton about how to avoid further investigations. This boil must be lanced. Robert Fiske, the independent counsel, has concluded that Mr. Altman did nothing illegal, but that there could hardly be a clearer example of unethical conflict of interest.

Do you disagree with that?

Mr. CUTLER. I certainly do. That is a very unfair characterization of what Mr. Altman said. What Mr. Altman said is what all you Republicans have said, what Mr. Leach has said, what I think I was saying from the outside at the time: Get an independent counsel appointed. That is what he meant by lancing the boil and he wanted to take that initiative from within the administration.

Mr. CASTLE. Are you aware that within the oversight of the RTC by the Banking Committee here that there is a statutory obligation that they come before us every 6 months to report on the progress of the RTC? I think it has been close to 15, 16, or more months, perhaps, since they have come before us. Mr. Altman has this responsibility. He seems to have given a heads-up criminal referral, as far as the White House is concerned, and running the statutes of limitations on civil actions, and so forth. I have no idea if he has given advice to this committee that they had better do this or they are in violation of the law. What are your views on that?

Mr. CUTLER. I think that is a rhetorical question, Mr. Castle.

Mr. CASTLE. Actually, it wasn't. I really would like to know if you know what he did.

The CHAIRMAN. The time of the gentleman has expired.

Mr. CASTLE. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Gutierrez.

Mr. GUTIERREZ. Thank you, Mr. Chairman.

Thank you, Mr. Cutler, for your testimony. I appreciate your candor and I hope you will not be offended if I direct my remarks not to you but to my colleagues.

We have heard much today about Congress' oversight responsibility. Some have suggested that the majority has abandoned that important responsibility. Those comments are wrong and they ignore the facts.

Our responsibility is to find the truth, to do it fairly, justly, and impartially. Unfortunately, I believe we are lacking some regard for fairness and impartiality today. Many comments and questions from my colleagues across the aisle, both in the media and here today, really surprise me. Proper oversight is much more than merely making broad, general accusations and making complaints regarding the scope of this hearing.

In fact, I believe we would benefit by following the advice of Mr. Leach himself regarding the scope and duty of congressional oversight. I quote his suggestions during the BNL hearings: quote, "There is no right this Congress should instigate an inquiry of the

executive branch about issues that relate beyond policy grounds." Unquote.

He further said, "It is key that a distinction be made between misjudgment and illegal behavior." We should remember Mr. Leach's words as we proceed with these hearings, and we should further remember that oversight is certainly not about ignoring a critical fact. The fact is simple. Special Counsel Robert Fiske has thoroughly investigated all of the contacts that we are addressing today and found no violations of the law. Perhaps that is disappointing to some people on this panel.

In fact, certain comments make me believe that some of my colleagues think Mr. Fiske is somehow not leading an aggressive investigation. I believe the opposite. I believe every person who is concerned about Whitewater should support the work of the special counsel.

But let me just reiterate, I am not alone in this belief. Let me read some words of praise of Mr. Fiske, and I quote: "Mr. Fiske is a man of unflinching and uncompromising integrity. He is the kind of person who will bring out the truth for the American people so that there will be no question as to the thoroughness and objectivity of this investigation."

Who said that? Somebody will say it was Barney Frank from Massachusetts doing the work of the President. Wrong. It wasn't Mr. Kennedy, and it wasn't my friend, Bobby Rush from Chicago. The person who said that was Mr. D'Amato, Senator D'Amato from New York, one of the leading critics of Whitewater and President Clinton. Well, perhaps it is surprising to some people to find out that he said that. It isn't to me.

I believe not interfering with Mr. Fiske's work is an appropriate goal, and I would think based on the previous comments of so many of my colleagues that not interfering with the special counsel would be an important goal for them as well. Certainly, few people exist who wanted the special counsel appointed more than my friends on the other side of the aisle. I think Mr. Gingrich of Georgia spoke for many of them when he said on January 3, quote, "If the Clintons are innocent, why don't they go ahead and agree to independent counsel to clear their name?"

Well, an independent counsel has been appointed, and thus far their names have been cleared. And agreeing not to impede that important investigation is not abandoning our oversight responsibility. It is merely helping to find the truth. A desire to find the truth is why those of us on this side of the aisle have consistently supported reauthorization of the Independent Counsel Act, a consistency that cannot be claimed by many of my colleagues who are making accusations today against the President.

For example, and you might like to hear this, Mr. Cutler. Mr. McCollum's memory did not serve him well earlier today when he said he had not opposed the Independent Counsel Reauthorization, which he did oppose in 1987 and which he did oppose in committee in 1993, and I have the committee report and his name is attached to the minority opinion of that committee report.

He voted for it once Whitewater got a little hot, of course, on the full floor of the House of Representatives, and then when it came back from conference, the final official vote, he voted against. So

Mr. Cutler, your memory wasn't really bad, and I am sure my distinguished colleague's memory wasn't that bad either, he just forgot which vote he was talking about.

But let me just make it very clear. It has been said that the reauthorization of an independent counsel is far too costly, quote, "far too often open ended and far too easily manipulated into a weapon of political retribution." Was it the Democrats that said that? No. It was the Republican minority report in opposing a special counsel.

I believe that we should listen to Mr. McCollum because those are his words in the minority report, and we should find and make sure that there isn't political retribution in these hearings. Instead, we should follow and allow Mr. Fiske to search for the truth and do what Mr. Leach has said, and I quote, "a very honorable man to do a very honorable job." That should be what we should do, because absolutely no official misconduct has been found thus far, and I support that kind of a process, Mr. Chairman.

The CHAIRMAN. The time of the gentleman has expired.

The Chair will recognize Mr. King.

Mr. KING. Thank you, Mr. Chairman.

Good evening, Mr. Cutler. I am the final Republican you will have to endure, so I guess the worst part of your day is over. I would just like to say at the outset, Senator D'Amato is a constituent of mine and he will be delighted when I tell him that Mr. Gutierrez is using him as a reliable source. Certainly, we have come a long way in bipartisanship.

Mr. Cutler, I am the final person on this side. I would like to make a series of evidentiary points, not give a speech, and allow you to respond at the end because of time constraints.

One, the other day on "Face the Nation" you said you have concluded that as far as the White House people are concerned, there have been no violations of any ethical legal standards. Mr. Cutler, I would think that if you look at Mr. Altman's diary, and if you accept it as being valid from January 4 to January 11, when it says that the First Lady's chief of staff told him that the First Lady is paralyzed because of Whitewater, that he said her strong inference was that the White House was trying to negotiate the scope of the independent counsel with Reno, assuming the Attorney General, and also that the First Lady has said quote, that she doesn't want the counsel poking into 20 years of public life in Arkansas.

If that is a valid entry by Mr. Altman, and that was a contemporaneous recollection of what happened, not 3 months later, but as of that date, then I would say that both Ms. Williams and indeed the First Lady may have been involved in conduct which is not ethical, because they were directly interfering, certainly the First Lady was interfering as far as trying to restrict the counsel and Ms. Williams was interfering and so was Mr. Altman.

Second, as I understand it, Mr. Cutler, you were the one who made Ms. Williams aware of the diary entry by Mr. Altman and subsequent to that, Mr. Altman delivered to Ms. Williams a sealed envelope marked "personal and confidential," which she threw away.

Now, I would think that since you are the White House counsel, she is in the White House, that that, considering the fact that she

has been before a grand jury, the fact that she has retained counsel, the fact that she is coming before this committee in this ongoing investigation by Mr. Fiske, it will be construed as destruction of evidence.

I think that she should have made that known to you or to her lawyer or to the special prosecutor rather than just destroy it as she admits she did.

Third, I have been hearing from the other side numerous comments about how criminal referrals are somehow trivial, there are thousands of them every year. I would refer you, Mr. Cutler, Mr. Altman gave a written statement in response to interrogatories after his February 24 testimony, and he said, quote, "It is the policy of the RTC not to disclose criminal referrals or information about their preparation. The disclosure of any information concerning a criminal referral may serve to alert a suspect that an investigation may be pending and enable a suspect to conceal or destroy evidence, conceal or dissipate the prima facie evidence or otherwise impede the investigation."

In addition to that, again, to show what I think is a real significance of a criminal referral, I have a July 14—a July 13 memo from the counsel in the RTC, where he specifically says, "The unauthorized disclosure of a criminal referral or the receipt of that referral would be a criminal act as defined in the Privacy Act of 5 U.S.C. section 552(A)(1)."

My final point, Mr. Cutler, and then I will be glad to have you respond. This is a followup on what Mr. Lazio had said before. On September 29 or September 30 of last year, the White House counsel's Office told Bruce Lindsey about the criminal referrals. On October 4 or 5, Mr. Lindsey told President Clinton of the criminal referrals. These referrals mention the Clintons, they mention the Clinton 1984 campaign, and they mention Arkansas Governor, Jim Guy Tucker, as a possible target.

Two days later, the President met alone with Governor Tucker in the White House. Now, this is 2 days before he is told that Governor Tucker could be a target of the investigation, yet 2 days after that, he meets with Governor Tucker. Now, what kind of a heads-up was that? How was he being protected or shielded when in fact he met with the person who could be a target of a criminal investigation?

Mr. CUTLER. Let me start with your last question. I have been through this before with Mr. Lazio, but Mr. Lindsey did not hear anything about Jim Guy Tucker being referred to in these referrals until on or after 7th, after this meeting, when he heard from Mr. Sloan about press inquiries to that effect.

Mr. KING. Could I just ask you, Mr. Cutler, were you told by Mr. Lindsey that he was not told about the September 29—

Mr. CUTLER. Mr. Lindsey—yes.

Mr. KING. He told you that personally yourself?

Mr. CUTLER. Yes. As far as I know—

Mr. KING. Do you have any notes of that?

Mr. CUTLER. There was no reference to Jim Guy Tucker in any of the contacts that had occurred up to that time between the White House and the Treasury, other than what was in press inquiries. Mr. Lindsey did not inform the President of any reference

to Jim Guy Tucker because he didn't know about it. But in any event, when the meeting occurred, the President and Jim Guy Tucker, his successor in office—you do see the Governor of the State when he comes—never discussed this issue.

Going to your next question.

Mr. KING. Let me just go back, then the whole purpose of this referral didn't serve the purpose.

The CHAIRMAN. The time of the gentleman has expired.

The Chair will say that we have about 4 minutes or less maybe to record our votes on a recorded vote, and we will recess to enable the members to do that.

[Recess.]

The CHAIRMAN. The committee will please come to order.

When we recessed for the votes, we had reached Mr. Rush. In the meanwhile, Mr. Ridge, who was unable to be with us earlier, has appeared, and I will honor the rule of his entitlement to 5 minutes after we have heard from Mr. Rush.

Mr. CUTLER. Mr. Chairman, may I please have an opportunity to respond to at least one of Mr. King's questions?

The CHAIRMAN. Yes. The staff had reported to me that you were desirous of completing your statement. So you are recognized.

Mr. CUTLER. I think Mr. King asked five questions. I only had a chance to answer one. I think most of the others were repetitive of previous questions. But he made one charge relating to Maggie Williams, Ms. Williams, that I must refute.

Mr. King, you suggested that when Maggie Williams received a copy in a sealed envelope of these diary pages from Mr. Altman, and threw it into her burn-bag because she didn't want to look at it, you suggested that that might be illegal, criminal destruction of documents and obstruction of justice.

Mr. KING. Or at least unethical.

Mr. CUTLER. I don't think it was any of those. The three pages were part of the Treasury production. They are in the possession of the Treasury. The Treasury has discussed them with the committee and asked for special treatment of the documents. They are in the hands of the Treasury. They are available to the committee.

She was offered a copy, which she did not want. We have never had a copy. We had heard about what was in those three pages. We had told Ms. Williams about it.

She simply didn't want to have one in her possession and didn't want to read it. That doesn't come within a country mile of obstruction of justice.

Mr. KING. I respectfully disagree.

Mr. Chairman, this allegation—

The CHAIRMAN. The time of the gentleman has expired.

Mr. KING. Mr. Chairman, I think I am entitled to reply to Mr. Cutler.

The CHAIRMAN. The gentleman is out of order.

Mr. KING. How do you know—Mr. Chairman, I think I am entitled to reply on this. Mr. Chairman, he responds—I should have the opportunity to respond.

The CHAIRMAN. The gentleman is out of order. And the Chair has recognized the counsel to complete his answer which was inter-

rupted at the time we left. And if the counsel has completed, then I will recognize Mr. Rush.

Mr. CUTLER. I have completed, Mr. Chairman.

The CHAIRMAN. Mr. Rush.

Mr. RUSH. Thank you, Mr. Chairman.

Mr. Cutler, I join with my colleagues in welcoming you to the committee.

Mr. Chairman, I want to commend you for the fairness in which you have conducted these hearings. We all are especially proud of the manner in which you have conducted these hearings.

The CHAIRMAN. Thank you.

Mr. RUSH. Now that I have sat here listening to Mr. Cutler and members of this committee exchange questions and answers on this matter, it strikes me that there is an enormous contrast between what the Republicans both on and off this committee said about this matter a few months ago and what they are saying today. Back in February and March, we were hearing that we had another Watergate on our hands, and that the Nation was on the brink of some sort of constitutional crisis.

As time has gone by, they have gradually retreated from these grand and far-reaching accusations. And today they find it necessary to bring the *O.J. Simpson* case to this committee in order to create a 30-second sound bite.

Mr. Chairman, what we are seeing in this hearing today is the first page of the closing chapter on this Whitewater matter. The Clinton administration has afforded this committee as well as Special Counsel Fiske and our colleagues on the Senate side an unprecedented level of cooperation on this particular matter.

We will soon be able to show once and for all to the American people that although some well-intentioned administrative personnel, administration personnel may have been a bit overly concerned about this matter, that absolutely nothing illegal or unethical has occurred.

Mr. Chairman, I only hope we will reach the day when the inquiries into this matter are finally resolved, that my colleagues on the other side of the aisle will have the grace, the class, the sense of fairness to admit that this chapter of history, overblown and exaggerated as it may be, should rightfully be closed once and for all.

Mr. Chairman, I do have a couple of questions that I would like to ask Mr. Cutler.

Mr. Cutler, you mentioned in your written statement that George Stephanopoulos and Harold Ickes on the White House staff called Roger Altman about their concern over the designation of Jay Stephens's law firm to handle some RTC matters.

Isn't it true that neither Jay Stephens nor his law firm were removed from that responsibility so that contact had no real effect on this or any other RTC matter?

Mr. CUTLER. That is correct, Mr. Rush, and no effort was made by the White House people to seek to remove him.

Mr. RUSH. The Republicans have claimed that a number of contacts between the White House and the Treasury and the RTC in sum total amount to regulatory manipulation related to the Madison Savings and Loan matter and the now criminal referral.

In your investigation of this matter, did you find any evidence of any kind of manipulation of the process?

Mr. CUTLER. None whatsoever, and we did find that, as I have said before, the top nonpolitical regulators of the RTC have expressly denied that any effort was made to change what they were doing and have reaffirmed that they did not change what they were doing.

Mr. RUSH. Last, Mr. Chairman, Mr. Cutler, there was an article in the *Washington Post* last week regarding a contact between the President and the Comptroller of the Currency, Eugene Ludwig. I think this occurred last December. You also mentioned this contact in your testimony today.

Would you expand briefly on your statement that there was no violation of any ethical standard relating to this contact?

Mr. CUTLER. The encounter, which was so brief, hardly deserves to be referred to as a contact, as I said. They met among 1,000 people at this Renaissance Weekend. The President said, I want to talk to you about Whitewater. They said nothing further.

At that point, Mr. Ludwig called the general counsel of the Treasury for guidance, was referred to a White House counsel, who phoned Joel Klein, the deputy White House counsel sitting behind me, who was also there at Renaissance Weekend. He spoke to the President. The President said, All I wanted to know from Ludwig was the names of some experts who could write about Whitewater and describe it to the people.

Mr. Klein said it would be inadvisable to ask Ludwig because he has some responsibilities over bank regulation but not the RTC.

The President said, I agree with you. And they never had a further conversation. It was simply a brief encounter. It was not a contact of any kind.

Mr. RUSH. Thank you very much.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. Thank you. The time of the gentleman has expired.

Mr. Ridge.

Mr. RIDGE. Thank you, Mr. Chairman.

It has certainly been worth the wait of several hours, Mr. Cutler. You have been here enduring far more than I. Someone asked me a few moments ago what I learned today, and I mentioned a few things, but not the least of which is I have learned today why the President of the United States would seek your special counsel.

Mr. CUTLER. Thank you, sir.

Mr. RIDGE. And I learned today why the President of the United States would send you here to initiate these Whitewater hearings. I appreciate your patience with all of us.

I do have, as you do, some ethical concerns about what has transpired. The appearance of impropriety. I understand full well, as you do, that sometimes the distinction between criminal misconduct, ethical violations, and just lousy judgment is gray and not as precise as we want it to be, and maybe as a result of all of this, we can pigeonhole it a little better and guide ourselves with a little greater specificity.

But I still have some concerns with regard to not so much the criminal alleged, or alleged criminal activity, but either the lousy

judgment or the ethical violations. And I wondered if you would share with me whether or not in your judgment the appearance of impropriety ever gives rise to an ethical violation according to any of the ethical standards that govern White House conduct.

Does the appearance of impropriety ever give rise to a violation?

Mr. CUTLER. There are certainly situations where an appearance of bias, for example, or appearance of having a financial interest in a matter, even though in reality you do not, could violate an ethical standard. I think what you have referred to as errors of judgment, what I prefer to refer to as the difference between what you do under the spur of the moment and the magnificent wisdom you can apply in the light of hindsight, when we see what happened.

I do think those are not ethical violations in any real sense. They are applications of judgment in the heat of the moment. They can turn out to be wrong. But they happen in every single administration.

Mr. RIDGE. I understand the maze of ethical guidelines that the White House operates under and that we have overreaching the executive branch generally. And I don't mean to impart knowledge of one Department's ethical guidelines to another part of the executive branch. But on the July 13, 1994 memo from John Bencley, who is counsel over at the RTC, there is a statement that says, "Aside from the general prohibitions listed above against unauthorized disclosure, there are specific prohibitions against disclosure of criminal referrals."

Now, I am not saying that the White House counsel's office had this knowledge, or I am not even imputing it to them. But it seems to me just from a commonsense point of view that the initiation of contact between Treasury and the White House should have given rise to some concern, should have raised the red flag, some bells should have gone off as to whether or not people in the White House were proceeding down a path that could result in at least the accusations of misconduct if not something else.

Mr. CUTLER. Mr. Ridge, bells did go off. If you will look at the chronology that is attached to my statement, you will see that two of the lawyers, Mr. Sloan, I believe, and Mr. Eggleston, discussed between themselves, was it appropriate to have this heads-up about the leaking stories from the press. And they concluded after reflection that it was entirely appropriate.

So far as we know, no information was transmitted from Ms. Hanson or anyone else at the Treasury to the White House people except what was leaking to the press. They were telling them what the press was saying about these criminal referrals.

Unfortunately, we live in a world where no matter how many memoranda like the July 13, 1994 memoranda are written, if there is a criminal referral that so much as mentions the President of the United States, it is going to leak. And there were anticipations that it would leak and hard evidence that it was leaking. And that is what led to the contacts, because it became necessary to prepare for press questions.

During your recess I listened to Nina Totenberg on public television, I guess, and she said she had heard—and I am just passing on rumor—from someone at the RTC that they had been sending

criminal referrals about Madison Guaranty to the Justice Department and not getting anywhere. And, finally, when they put in something mentioning the name Clinton, they got results. And those—it naturally leaked.

Mr. RIDGE. My time has expired. I do have some additional questions to submit in writing.

[The information referred to can be found in the appendix.]

The CHAIRMAN. Thank you, sir.

Ms. Roybal-Allard.

Ms. ROYBAL-ALLARD. Mr. Cutler, during the course of this hearing, you have been unfairly called a smooth operator. It has been implied that you were hired by the President because perhaps you would find a way through your, quote, "slick," unquote, manner to find a way to change the facts of the investigation.

My question centers around the investigation itself. First of all, did you have sufficient amount of professional staff to do a complete and thorough investigation?

Mr. CUTLER. I believe I did. I had my deputy, Joel Klein, who sits behind me. I had both Ms. Sherburne and Ms. Cheston, who at one time were my law partners, very good litigators. Ms. Cheston is now the deputy general counsel of the Air Force. And I drafted her, as they say, detailed, got her detailed. Ms. Sherburne is a litigation partner in our law firm who came over. I had the assistance of the excellent White House counsel's legal staff.

And we also had the benefit of exchanging information with the Treasury inspector general. We gave him access to White House witnesses. And we had access to his transcripts of his interviews with the Treasury witnesses.

So we believe we have made as thorough an investigation as was possible within the time available to us.

Ms. ROYBAL-ALLARD. Do you feel that you and your staff reviewed all pertinent documents related to this issue?

Mr. CUTLER. Yes. And I would prefer, instead of being called smooth and agile, I would rather be called thorough and fair.

Ms. ROYBAL-ALLARD. I am giving you this opportunity, Mr. Cutler. Was anyone knowingly not questioned because he or she could provide embarrassing information to the administration?

Mr. CUTLER. No.

Ms. ROYBAL-ALLARD. Was anything done by anyone to impede the thoroughness of your investigation?

Mr. CUTLER. No.

Ms. ROYBAL-ALLARD. During the course of your investigation, is there anything different that you would perhaps do under similar circumstances, under this kind of an investigation?

Mr. CUTLER. You mean anything I did not do?

Ms. ROYBAL-ALLARD. Anything unusual or something different that you did representing the President that you would not otherwise have done with another client.

Mr. CUTLER. No.

Ms. ROYBAL-ALLARD. Mr. Cutler, my final question is, do you have complete confidence in the thoroughness and integrity of your investigation and conclusion that there was no criminal or ethical violations by any member of the White House staff?

Mr. CUTLER. Yes, I do.

Ms. ROYBAL-ALLARD. I yield back the balance of my time, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman.

Mr. Cutler, I also want to thank you for your patience today in working with the committee. I have actually been a little surprised today at how much time we have spent talking to you about issues like redaction, how many guards are or should be guarding testimony in the witness room here, the percentage of issues that have been raised in this hearing, whether it is 5 percent or 18 percent, and even the tax treatment of the legal defense fund that the President has established. I would prefer to use my few minutes to zero in a little bit on the actual investigation that you did.

As I understand your testimony, Ms. Hanson, the Treasury general counsel, told Mr. Nussbaum, who was then the White House counsel, that the RTC criminal referrals might mention the Clintons or identify them as possible witnesses.

Did Mr. Nussbaum ever suggest that the Clintons should not be identified as possible witnesses?

Mr. CUTLER. No.

Mr. BARRETT. Did any other White House employee ever suggest the Clintons should not be identified as possible witnesses in the criminal referrals?

Mr. CUTLER. No.

Mr. BARRETT. Did Mr. Nussbaum ever attempt to have the Clintons' names removed from the referrals?

Mr. CUTLER. No.

Mr. BARRETT. Did any other White House employee ever attempt to have the Clintons' names removed from the referrals?

Mr. CUTLER. No.

Mr. BARRETT. During the course of your investigation, how many people did you talk to?

Mr. CUTLER. Well, including my able team behind me, we talked to all the potential White House witnesses or their lawyers that this committee and the Senate committee intend to talk to, and anyone else we thought might have relevant information.

Mr. BARRETT. Can you give me a ballpark figure about how many people we are talking about?

Mr. CUTLER. Ballpark, I would say it is between 20 and 30.

Mr. BARRETT. Based on your review of those examinations, did any White House employee take any steps at all to stop the criminal referrals from going forward?

Mr. CUTLER. No.

Mr. BARRETT. Did any White House employee attempt in any other way to interfere with the criminal referrals?

Mr. CUTLER. No.

Mr. BARRETT. Were there criminal referrals in fact pursued?

Mr. CUTLER. Yes.

Mr. BARRETT. I would like to turn briefly to the issue of recusal and Roger Altman. In your best judgment, when should he have recused himself?

Mr. CUTLER. Well, if I can refer to Nina Totenberg once again, she said that if a question arises—and this is purely a political judgment—as to whether you should recuse, you had better recuse.

Mr. BARRETT. Would the February 2 date be a good date, do you think, for that? Certainly, no later than February.

Mr. CUTLER. I would say no later than February 2.

Mr. BARRETT. And he actually recused himself 3½ weeks later?

Mr. CUTLER. Yes.

Mr. BARRETT. Did anything occur between February 2 when he should have arguably recused himself, or certainly no later than that date, and the date he did recuse himself that in any way impeded any investigation?

Mr. CUTLER. He took no action whatsoever. The only thing that really occurred enhanced the RTC's ability to investigate, and that was the passage and signature by President Clinton of the bill extending the statute of limitations on civil claims which occurred on February 12.

Mr. BARRETT. And what role did he play in that?

Mr. CUTLER. His role in that was that the Treasury went along with that extension, and the President promptly signed it.

Mr. BARRETT. I yield back the balance of my time.

The CHAIRMAN. Thank you.

Ms. Furse.

Ms. FURSE. Mr. Chairman, I welcome these hearings. In fact, I voted for these hearings. And I appreciate, Mr. Chairman, that you have given us this opportunity. I think that we are here to do the people's business, and part of the people's business is factfinding.

But I must say, Mr. Chairman, that I have been shocked at the politicking I have seen today rather than the factfinding. But I am confident that the American people will know the difference between factfinding and witch-hunting.

I am going to ask you, Mr. Cutler—and I want to thank you for the tremendous effort and time—I am going to ask you for facts, because this is a factfinding situation.

Could you tell me how you went about this investigation, how your staff reviewed documents, and what steps did you undertake to determine that the truth of your investigation was there?

Mr. CUTLER. We did this investigation the way lawyers do other investigations, for example, as counsel for an audit committee of the board of directors, if there is an allegation of wrongdoing. You interview people, you search for documents.

In this case, we were, of course, following behind Mr. Fiske, who had a grand jury and who made a very thorough investigation of the same subject. Indeed, we could not begin interviewing witnesses ourselves or talking to their lawyers until after Mr. Fiske had concluded his investigation for the reasons I mentioned earlier.

But within the last 5 or 6 weeks, after he permitted us to go forward, we have very thoroughly, we believe, interviewed everyone on the White House side. We have consulted with all their lawyers. We have gone through all the documents and submitted documents, of course, to this committee. And, as I mentioned, we have interviewed some of the key Treasury people, along with their lawyers, and we have had an exchange with the Treasury inspector general so that he was able to take depositions from the White

House people involved, and we were able to examine the transcripts of the depositions he took from the Treasury and RTC people.

Ms. FURSE. Mr. Cutler, if I may, I have heard some statements that have upset me about your experience. I know that you have had to use your judgment in this. Because I am a newcomer, perhaps you could tell me, what is your experience? How do you get to this position? Can you give me some background on your experience?

Mr. CUTLER. Well, I have been here as a lawyer in Washington since the end of World War II. I helped to found a law firm here which I hope is going to live beyond me and become something of an institution, which is what lawyers always want their law firms to do.

I have taken part in a number of congressional investigations, independent counsel investigations. I have argued a lot of cases before the Supreme Court. I think of myself as a lawyer, not as a politician, a lobbyist, a smoothy, or some of the other adjectives I have heard.

Ms. FURSE. Thank you, Mr. Cutler.

Thank you, Mr. Chairman. I yield back the balance of my time.

The CHAIRMAN. Thank you, Ms. Furse.

Mr. Wynn.

Mr. WYNN. Thank you, Mr. Chairman.

Mr. Cutler, thank you for your service to the President and also thank you for your patience here today. We probably reached a point where, as they say, all that need be said has been said, but all that need to say it haven't. Keeping this in mind, I will try to be very brief.

Mr. Chairman, it appears to me that after a very long day of discussing referrals, recusals, redactions, we have come at the end of the day to one very clear conclusion, and that is that the Democratic counsel to the President and a Republican independent counsel have investigated this matter rather thoroughly. They have come to a very clear conclusion for the benefit of the American people. And that is that there was no criminal, ethical, or civil wrongdoing in this case.

And that pleases me. But, unfortunately, it also reveals that much of today's discourse has not been about factfinding but rather has been pure politics and posturing on the part of our Republican adversaries, shall we say, attempting to make mistakes of judgment into something much more than it is, a suggestion to the American public that much more has gone on.

Mr. Cutler, I would just like to ask a couple of quick questions with regard to some of the specific actors that were involved in this particular case.

You mentioned, I think on page 2 of your testimony, that the Clintons were mentioned incidentally. How would you describe that? What do you mean when you say that the Clintons are mentioned incidentally in the criminal referral?

Mr. CUTLER. Bear in mind, we have never seen the criminal referral, and all we know is what has been in press reports resulting from these leaks that I described. But our understanding from these reports is that there were some nine referrals on various

matters relating to Madison Guaranty, and in two instances—whether it is one referral or two referrals, we have no idea—mention was made of the Clintons.

In one case, it was because the Clintons had had a real estate joint venture known as Whitewater with Mr. and Mrs. McDougal. Mr. McDougal was the head of Madison Guaranty. And there were, apparently, questions as to whether Madison Guaranty funds had moved improperly from Madison Guaranty Bank through Mr. McDougal into the joint—the real estate joint venture called Whitewater.

The second question that we understood was that Mr. McDougal had arranged for a campaign contribution party of some kind after which he delivered a series of checks, some of them on Madison Guaranty, and the question that was referred was, was Madison Guaranty money improperly used to make those campaign contributions.

Mr. WYNN. Did you pursue these issues with the administration?

Mr. CUTLER. We pursued neither of those issues with the administration. Those were matters of the criminal investigation which ultimately ended up in the hands of Mr. Fiske within the Department of Justice.

What we pursued was how to deal with—when I say “we,” my predecessors in the White House—pursued was how to deal with the press queries and the press leaks about these mentions of the Clintons, and all of the questions about the Whitewater real estate project, and about these campaign contributions that resulted.

Mr. WYNN. Let me ask you about some of the specific individuals involved. Ms. Hanson, did you determine whether she did anything that could be characterized as either illegal or unethical?

Mr. CUTLER. I concentrated on the White House personnel. The Treasury personnel, and Ms. Hanson was the general counsel of the Treasury, are being—their conduct is being reviewed by the inspector general at Secretary Bentsen’s request and the Office of Government Ethics. But I have no reason to believe she did anything that would be illegal or violated any standard.

Mr. WYNN. What about Mr. Lindsey. Did you uncover any wrongdoing on his part?

Mr. CUTLER. None whatsoever.

Mr. WYNN. With regard to Mr. Stephenopoulos and the Jay Stephens firm, did you uncover any attempt on the part of any administrative officials to block or oust Mr. Stephens?

Mr. CUTLER. None.

Mr. WYNN. The *New York Times* makes reference to an apparent attempt to block an RTC investigation of Madison. Did you uncover any evidence of that?

Mr. CUTLER. No evidence whatsoever of such an attempt.

Mr. WYNN. With regard to the Altman briefing of the White House on February 2, did you discover any improper actions, either illegal or unethical, on the part of Mr. Altman?

Mr. CUTLER. No.

Mr. WYNN. Thank you very much, Mr. Cutler.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, sir.

Mr. Fields.

Mr. FIELDS. Thank you, Mr. Chairman.

Let me thank Mr. Cutler for being here today and spending so much time with this committee.

Mr. Cutler, I would like to also review, Mr. Wynn touched on it just a little bit, the bottom of page 2 of your testimony and the top of page 3, when you talked about Ms. Hanson, the Treasury general counsel told Mr. Nussbaum, then White House counsel, that the RTC criminal referrals might mention the Clintons. My question to you, sir, is did Mr. Nussbaum or any White House employee ever at any time suggest that the Clintons should not be identified as possible witnesses in a criminal investigation?

Mr. CUTLER. No.

Mr. FIELDS. Second question, sir, is did Mr. Nussbaum or any White House employee ever attempt to have the Clintons' names removed from the referrals?

Mr. CUTLER. No.

Mr. FIELDS. To the best of your knowledge, sir, and based on your extensive review of the facts, did any White House employee at any given time take any steps to stop the criminal referrals from going forward?

Mr. CUTLER. No.

Mr. FIELDS. My next question, sir, is did any White House employee attempt in any other way to interfere with this criminal referral?

Mr. CUTLER. No.

Mr. FIELDS. Were the criminal referrals, in fact, pursued, Mr. Cutler?

Mr. CUTLER. Well, they were certainly in fact pursued because these criminal referrals were first put by Attorney General Reno in the charge of a former U.S. attorney, a—selected in the Republican administration, who was brought in especially to work on them. And then, as the hue and cry about Whitewater increased and demands came from Congress and elsewhere and the press for the appointment of an independent counsel, even in the absence of an independent counsel law, at that point Mr. Fiske was appointed independent counsel. The President requested Attorney General Reno to appoint an independent counsel. She chose Mr. Fiske.

And Mr. Fiske has been carrying on the investigations arising out of that criminal referral and other matters ever since.

Mr. FIELDS. Sir, that leads me to my next question. Did at any time any White House employee attempt to influence the RTC investigation into Madison to steer the investigation away from Whitewater or away from any mention of the Clintons?

Mr. CUTLER. No.

Mr. FIELDS. Did any White House employee use criminal referral information for his or her own personal financial benefit?

Mr. CUTLER. No.

Mr. FIELDS. My last concern, sir, is the meeting which you relayed, you referred to, rather, as the second contact, which took place on February 2, who was present at that meeting?

Mr. CUTLER. At the February 2 meeting, Mr. Altman was present with Ms. Hanson, and I believe the White House people present were Mr. Ickes, Mr. Nussbaum, Ms. Williams, and Mr. Neal Eggleston, who is on the White House counsel's legal staff.

Mr. FIELDS. Was Ms. Williams, the First Lady's chief of staff, present?

Mr. CUTLER. As you know, with respect to Whitewater, Mrs. Clinton was the more active of the two Clintons. Governor Clinton was being Governor or running for President or something throughout the period. And Mrs. Clinton had managed that investment to the extent that the Clintons were watching the investment, which was really run by Mr. McDougal.

And when Mr. Altman asked for the meeting, he indicated either that he wanted to talk about the statute of limitations issue relating to these criminal referrals—to the potential civil suits which the RTC might bring arising out of the criminal referrals, and it was natural when Mr. Ickes heard that, he invited Ms. Williams to the meetings because it involved Mrs. Clinton.

Mr. FIELDS. My time has expired, but let me just ask this question, sir. Did Ms. Williams do anything improper or unethical at that meeting based on your investigation?

Mr. CUTLER. No, and to my knowledge she has never done anything improper or unethical related to this or any other matter at all.

Mr. FIELDS. I thank the gentleman.

I yield back the few seconds that I have left, Mr. Chairman.

The CHAIRMAN. Thank you. Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman. Mr. Cutler, it is nice to see you again.

Mr. Cutler probably doesn't remember this, but it was Mr. Cutler and his law firm who gave me my first job out of law school in 1970. I guess I ought to disclose that for fear that somebody will say I have some kind of conflict if I don't disclose it.

The CHAIRMAN. Do you want to recuse yourself?

Mr. WATT. No, I think I will on the advice of counsel not recuse myself, although I am not very far from it. I am very close to associating myself with the comments made earlier by Mr. Mfume and Ms. Waters, especially after having sat here all day and listened to what has transpired.

I had the sense going into this hearing that we were engaging in a major waste of taxpayer money, and I think that my suspicions have been confirmed on that.

Let me just ask a question, and then I want to come back to that issue. I take it that the scope of Mr. Fiske's investigation and the authority that he had was broad enough to determine whether this administration engaged in any illegality. That was what he was assigned to do?

Mr. CUTLER. Yes, that is correct. His principal mission was to find out whether there was enough information and evidence to warrant prosecution, criminal prosecution, for violation of any criminal law.

Mr. WATT. And after we have gone through—and I take it he has embarked on that, and up to this point he has already, based on what he has done up to this point, has found no illegality?

Mr. CUTLER. On the part of any government official. And he has concluded his investigation with respect to these White House-Treasury contacts.

Mr. WATT. Then I want to use a minute or two that I have left just to express some sense of outrage, that we really are doing a disservice to the public. And I had my staff go and investigate what we have budgeted for these hearings. I understand that approximately \$400,000 has been approved in the legislative branch Appropriations bill for 4 days of hearings. That would be about \$100,000 a day.

And so I thought it might be interesting to get some appreciation of how we could spend \$400,000 if we did it substantively and constructively rather than engaging in this what I believe is a worthless pursuit.

The CHAIRMAN. Will the gentleman yield to me on that point? That \$400,000 is the Senate, not us.

Mr. WATT. I understand that.

The CHAIRMAN. Oh, OK.

Mr. WATT. But assuming that figure is correct, I just want to advise the public that I am advised that we could get about 40 additional people participating in the National Service Program with that amount of money. We could vaccinate 1,432 additional children. We could get 80 additional children participating in Head Start.

We could have 4 days of hearings. We could provide health care for 92 families. We could provide Medicaid benefits for 144 additional recipients or Medicare benefits for 120 additional people.

We could send 28 college students to school for an entire year on that amount of money. Or we could fund 236 additional families' earned income tax credit for that amount of money. I would think that any of those pursuits would be a better use of the money than what we have been embarked on today. I think we have appointed an independent counsel to do this, and I would hope we would get out of the counsel's way and let him do his job, and let's go back to substantive issues rather than chasing our tail on this Whitewater issue.

Thank you, Mr. Chairman.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Klink.

Mr. KLINK. Thank you very much, Mr. Chairman.

Again, I laud the chairman for the way he has conducted this hearing, even though I associate myself with Mr. Watt's comments on the hearing. I think there are much better ways of spending our time.

I just wanted to follow up and to use the modern vernacular, Mr. Cutler, you also have been very patient and very informative to us. It is almost Miller time, but not quite.

Let me ask you to sit back for a second, you have testified ad nauseum to some things. You testified, I believe, there was no crime committed, no one was coerced into committing a crime, there has been no obstruction of justice, no civil wrongdoing, no unethical behavior, maybe some bad judgment.

But within all this, do you have any idea at this point, we heard Mr. Watt talk about the kind of money we are spending, do you have any idea how much money you have expended to find those facts, facts that Mr. Fiske's investigation, I am sure, would have shown up sooner or later?

Mr. CUTLER. Well, it is certainly the time of a number of the lawyers on the legal staff. Goodness knows how much money Mr. Fiske's investigation has involved up to now. I do want to say, it is important, as many of your colleagues have pointed out, to get to the bottom of these matters, to satisfy people that nothing—

Mr. KLINK. I understand, Mr. Cutler. My point is this, though. We have Mr. Fiske conducting his investigation. I understand, although I don't know him, his reputation is very good. I understand he is a Republican, and if you want to have a two-party system it is nice to have the fox watching the hen and the hen watching the fox, however that goes.

But the point of the matter being that then you are investigating the same thing, and I understand it is very parallel, or am I mistaken in understanding, you are investigating really the same things Mr. Fiske investigated, and now we are investigating your investigation. At some point we have reached some diminished returns, I would think.

Let me also just ask you, in these precarious and perilous times, is the White House at all distracted—I am talking about the President, the President's staff, are they distracted by all that has been going on in this matter called Whitewater? Does it affect the ability to govern?

Mr. CUTLER. None of it helps. I think all of the stories, particularly the wildest stories, are harmful to the general ability of the President to pass his legislation. They need to be rebutted. They needed to be dealt with.

But the President is being President. That is what he was elected to do. He is working on problems like the Middle East, problems like health care, the Crime bill, GATT, NAFTA, and his record of accomplishment, notwithstanding all the Whitewater furor during this past year, I think has been very high.

Mr. KLINK. Some of us wish he had spent less time on NAFTA, maybe. But let me just—but the point being that all those important issues, Korea, Somalia, Haiti, creating jobs, health care reform, welfare reform, a lot more could be done on those issues if we didn't have the distraction of Whitewater, which as Mr. Klein pointed out, and since Mr. Klein made that comment I have heard again, no new facts have come out today.

Is that safe to assume, that there could be a lot more effort of not only the President but other people being focused on those issues?

Mr. CUTLER. Yes.

Mr. KLINK. The President is not, I would understand, if I understand his salary as Governor of Arkansas being somewhere in the mid-\$30,000 range, probably not what we would call in this day and age an independently wealthy person. How much could all this end up costing the President, even though nothing, as we said in the beginning, no crime was committed, no one was coerced, no obstruction of justice, what is the message here for anyone who wants to be a Chief Executive of this Nation, I guess you must be a multimillionaire to seek the office of Presidency. From this point forward are we breaking new ground, Mr. Cutler?

Mr. CUTLER. It is true of the President and true of all the other people who have been called up, government servants who don't get

paid very much who have had to hire lawyers. It is true of all of them. It is a great financial burden on everyone involved.

Mr. KLINK. Mr. Chairman, I yield back the remainder of my time.

The CHAIRMAN. The gentleman yields back the balance of his time. And the Chair recognizes Mr. Fingerhut.

Mr. FINGERHUT. Thank you, Mr. Chairman. I guess, Mr. Cutler, I hold in my hand the final questions for this series. I will leave it to others to judge how it is I ended up last on the list.

But perhaps because I am last, it falls to me to bring back the central question of the hearing. While I sympathize with all that has been said before me about how we could better spend money, the fact is that there was a question left for this committee by Mr. Fiske. He concluded that no criminal violations occurred. That is self-obvious. The criminal referrals are in the hands of Mr. Fiske and they are being pursued.

But he left open the question for us whether or not any ethical violations existed. And that is a responsibility of this committee to examine. You have suggested that there was no attempt to influence the criminal referral process. I think that that is a conclusion that is fair, but it is also one that can be questioned.

One has to—you have reached that conclusion by accepting Mr. Nussbaum's explanation of his reason for asking Mr. Altman not to recuse himself. The reason given in your testimony from Mr. Nussbaum is that he was concerned about potential conflict in positions with Ms. Tigert. I assume we will hear from Mr. Nussbaum himself.

But that requires a leap of faith, to accept his explanation. And it is perfectly fair, it seems to me, for some of us on the outside, having looked at that conversation, to suggest otherwise, that maybe Mr. Nussbaum was trying to influence the conduct of the investigation by keeping Mr. Altman on board. I think that is a question that is left open at the end of this day that we are going to need to investigate further.

The next step, then, is once having concluded that there was no criminal referral—no attempt to influence the criminal referral process, you then also conclude that there was no violation of ethical standards.

If I can refer back to your testimony on pages beginning on page 4, where you discuss the applicable ethical standards, I just want to ask you briefly about them. You list three possible ethical standards that you think might apply. My questions are about number one and number three. I think number two is also self-obvious.

Number one is whether or not there had been any appearance essentially of partiality, or an ability of those involved to influence the course of events. And you say that you conclude that there was not, and you conclude so because you say that none of the White House staff members involved in the contacts, and I am about half-way through the paragraph that you label number one, none of the White House staff members involved in the contacts have any of the types of financial or family relationships with President or Mrs. Clinton that would raise the issue of partiality. It is not partiality, you continue, for Presidential aides to receive information or ex-

press opinions relating to the interests of the President for whom they work.

I am concerned that that is an extraordinarily narrow interpretation of what might be guiding their interest. Clearly, they weren't financially involved in Whitewater. They didn't know them, they weren't invited to be financial partners. But they do have an interest in what happens in the White House. Their jobs may depend on it, their careers may depend on it. Certainly, the success of the President is involved.

Is it only the ethical standard, Mr. Cutler, that they not be personally financially involved in the sense of investors for this section to be implicated?

Mr. CUTLER. This particular standard has two tests. First, you have to be participating in the matter. And there is no reason to think that any of these White House people who received the heads-up and did nothing about it except to answer press queries were participating in this RTC matter in any sense.

And the other question is—they did nothing involving that matter. The second point is that it is limited to your own financial interest or that of a relative or of a very close friend and none of them fit in that category.

Besides that, I point out, I tried to point here, I put to you an example. Let us say there is a bill to raise or lower the salary of the President. Clearly, the President has an interest in that in some sense of the word. But I don't think anyone would question—it is entirely legitimate for the President's aides to receive information, give opinions, and argue what point one way or the other.

Mr. FINGERHUT. I guess I don't see the full force of the analogy, but because time is brief I want to ask you about point three. It seems that the heads-up principle that you have articulated here relates to the fact that there were press leaks and you felt it appropriate, and indeed I think it is unquestionably appropriate to notify the White House that press leaks are coming.

Is it the fact of the leak that makes the heads-up principle apply? In other words, if there had been no leak or the leak perhaps turns out to be erroneous, the information about the leak, that then it would not have been appropriate to give the heads-up?

Mr. CUTLER. It is the fact or the danger of the leak that makes it appropriate to provide the general information that there is a criminal referral, and the nature of the leak and what is reported in the leak and the questions that are being asked.

Mr. FINGERHUT. Again, I see the time is up. I am concerned about the narrowness of that interpretation. Because there is always sorts of information that floats around in the press that may or may not be accurate, to give heads-up any time there is any reporter out there chasing any story, would strike me as a very broad—

Mr. CUTLER. These are stories relating to the President. If there are press queries, it is going to be up to the President and the White House Press Office to answer them.

Mr. FINGERHUT. I thank you, sir.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Leach has requested to be recognized briefly, and I will honor that request and recognize Mr. Leach.

Mr. LEACH. I thank the Chairman.

Let me conclude by expressing my appreciation to the chairman for a fine job in conducting these hearings. Let me also express my appreciation that the White House has available fine counsel. It is important, however, before the hearing closes to place in the record one clarification, a clarification which, by the way, isn't a smoking gun, but it might be described as a poignant pen problem.

In Mr. Cutler's exchange with Mr. Lazio and Mr. King, Mr. Cutler stated that Mr. Lindsey had no knowledge of the possibility Governor Tucker might be referenced in a criminal referral until October 7, the day after the President met with the Governor.

Actually, according to the handwritten notes of White House Associate Counsel Cliff Sloan, which are tab M of our documents that we have released today, Ms. Hanson, the Treasury general counsel, informed him on September 30 that Tucker was a subject of the referrals, and that the Clinton 1985 campaign was listed as a coconspirator.

According to the record, Mr. Sloan briefed Mr. Lindsey, who briefed the President on the referrals prior to the President's meeting with Mr. Tucker. Why does this matter?

The referrals were sent from Kansas City in draft form on September 24 to Washington RTC. They were sent to the Justice Department on October 8. Insider notification of a possible mention in the criminal referral gives a political figure more than a P.R. heads-up. It gives a political figure two options: One, to attempt to sidetrack an investigation; two, to frustrate an investigation by possible destruction of documents.

Whether the first approach was implicitly undertaken, clearly, as Mr. Cutler noted, it didn't work. But with respect to frustration of the probe, we don't know what happened. We don't know what happened to the records of the 1984 campaign. They are now said to be lost. We do know the President met with Gov. Jim Guy Tucker, with whom any lawyer who knew about this circumstance should have been impelled to advise the President not to meet.

And that is precisely why it is the view of the minority that it was unethical for the Department of the Treasury to inform the White House of these criminal referrals, and unethical for a lawyer at the White House either to inform the President or see that the President was provided information about these referrals.

This notification clearly violated then-existing ethical guidelines. And I would say that is why on the one fundamental precept the minority remains in dramatic difference with the counsel. And that is that no American, whether for P.R. reasons or any other reasons, no American, including the President of the United States, is entitled to insider information on the development of criminal referrals that may relate to that individual.

And that is why we believe there is a public ethics issue here. There may be differences of judgment on just how serious it is, but it is not of light import. I am sorry there is this disagreement, because I respect you so much, sir. But there is a disagreement on this issue.

Mr. CUTLER. May I reply briefly, Mr. Chairman?

Mr. FRANK. Mr. Chairman, I would say the reply should be at least equal to—it shouldn't be brief, necessarily. I don't think Mr. Cutler is restrained in his reply by time.

The CHAIRMAN. Oh, no. The Chair recognizes Mr. Cutler and thanks him for his patience and willingness to do so.

Mr. CUTLER. I can be very brief about this. You know my respect for you, Mr. Leach, and I think we have been something of a mutual admiration society for some time. I remember first that so far as we know, everything that Ms. Hanson transmitted was from press information other than the fact that there was a criminal referral. But all the details, whatever she transmitted, were from press information.

You will have both Mr. Sloan and Mr. Lindsey here to query. Mr. Lindsey, as I understand it, believes he did not learn about press reports that Jim Guy Tucker was also mentioned in these referrals until the day after the President met with Jim Guy Tucker.

He also believes that none of these referrals were discussed, none of the Whitewater matters were discussed in the meeting of the two that the President and his successor as Governor had.

And that seems to me that really disposes of the matter. But we will see. You will have a chance to examine all of the people involved.

The CHAIRMAN. Thank you, and thank you, Mr. Cutler.

I believe that I myself am torn with great inner arguments about offering observations and round up and summing up. But I think the record, the proceedings are clear, and citizens, whether they are Members of the Congress or not, can form as good a judgment as I. And I believe that sufficient unto the day is the evil thereof.

So thank you very much, Mr. Counsel, you have really cooperated with us as fully as any person could. I, for one, want to express the appreciation of this committee for your ready cooperation.

As you know, you were not in my intended purpose going to be the opening witness. But seeing that the special counsel would not accept our invitation to be the leadoff witness, in order to clarify these tenuous areas of jurisdictional judgment, you did become the leadoff witness, and we are mostly in your debt, and we want to thank you for your patience and forgive us for the travail and rather lengthy ordeal that you have been compelled to undergo.

And I wish you well for the remainder of this day. And the committee will stand adjourned until Thursday morning at 9:30 in this hearing room.

Mr. CUTLER. Thank you, Mr. Chairman.

[Whereupon, at 6:52 p.m., the hearing was adjourned.]

A P P E N D I X

July 26, 1994

**Statement of the Honorable Henry B. Gonzalez
Chairman
Committee on Banking, Finance and Urban Affairs**

July 26, 1994

Opening Statement

The Committee meets, pursuant to notice and pursuant to House Resolution 394, to conduct hearings on the so-called Whitewater affair. These hearings will cover the completed phases of the investigation conducted by the Independent Counsel, consistent with the agreement announced by the bipartisan House leadership on June 17.

The Chair will now take a few moments to discuss the hearing and procedure, before making an opening statement. These are housekeeping issues, but they are important and your careful attention will be appreciated.



First, I want to dispose of one matter. The leadership agreement charges us among other things to have hearings on "whether the death of Assistant White House Counsel Vincent Foster was a homicide or a suicide". I submit that neither we nor any other Committee has the expertise to determine such questions. I submit that no responsible person would dispute the findings of the Independent Counsel on this question. And I submit that absolutely no public good would be

served by a public hearing on a subject that is clearly closed, and whose airing would further torment Mr. Foster's innocent family.

Therefore, I ask unanimous consent that the Committee agree that it will not conduct hearings on the question of Mr. Foster's death. We should simply accept Mr. Fiske's findings, not investigate Mr. Fiske's investigation of the investigation. In addition, Mr. Foster's family has made pleas that the bounds of decency be observed and their privacy respected. I think they are right.

Is there objection?

As Members know, both House Resolution 394 and the bipartisan leadership agreement contemplate that our hearings will be "structured and sequenced so that they will not interfere with the on-going investigation of Special Counsel Robert B. Fiske, Jr." I ask unanimous consent that these documents be included in the record at this point. Is there objection?

At the time of the bipartisan leadership agreement, it was expected that Mr. Fiske would have fully completed his work on the three areas commonly called the "Washington phase" of his investigation, to-wit the death of Vincent Foster, the White House-Treasury contacts with the Resolution Trust Corporation related to the

failure of Madison Guaranty Savings of Arkansas and the White House handling of Mr. Foster's papers following his death. However, on July 15 Mr. Fiske advised that he has not completed his work on the handling of Mr. Foster's papers. Accordingly, in order to be consistent with the directive of the Resolution and the bipartisan leadership agreement, the handling of Mr. Foster's papers is not a subject of the hearings we are undertaking today.

These hearings have been assigned to this Committee and the Chair has been surprised and dismayed to learn that the Minority of the Committee on Government Operations apparently has been free lancing and has made numerous inquiries and obtained a great deal of information without the knowledge of this Committee or their own Majority. This is deplorable and not helpful to the process.

A few words about procedure: I want to advise Members that when a question or subject is raised that falls outside the scope permitted by House Resolution 394 and the bipartisan agreement, witnesses will be advised that they need not respond. The Chair hopes to be liberal, but must at the same time observe the proper limits under which we are directed to operate. The Chair earnestly requests the cooperation of all Members in avoiding areas and issues that could compromise or conflict with Mr. Fiske's ongoing investigation.

Our purpose here is to elicit information for the use of the Congress. We are not here to prosecute anyone; we are not here as a judicial body. I want to remind

Members that our witnesses are here voluntarily and are entitled to our full respect. They have not been accused of crimes, and I repeat, we are not here to charge, prosecute or adjudge questions of guilt or innocence.

Our witnesses will be sworn even though our general practice has been not to require the swearing in of witnesses who appear voluntarily. No one should draw any inference from this; the consensus is that in this case all witnesses should be sworn in and that will be the procedure.

Questioning will be conducted under the five-minute rule, in order that all Members can have an equal opportunity as specified in Committee rules and in House Rule 11(2)(j). The Chair as always will be considerate and fair to Members who are in mid-question when their time expires. However, the Chair also requests that Members carefully observe the time in order that everyone can have a fair opportunity.

Where Members are referring to papers in questioning a witness, the Chair will expect the witness to be provided with the relevant paper. The Chair would also expect that such papers will be made available to all Members for their reference. This will help ensure fairness to all parties concerned.

Questions have been raised concerning how witnesses are to be empaneled. For the sake of efficiency, the Committee generally hears witnesses in panels. The

Chair will endeavor to arrange to hear witnesses in a reasonable, logical way, but also in a way that does not cast unfair light on a given individual. This has been the practice in our hearings.

A question was also raised as to whether questions by staff would be permitted. The Committee has never done so in the past, because the purpose of hearings is to provide information to the Members, not staff. I expect Members to be fully capable of asking their own questions today no less than on past occasions.

I have been asked whether long blocks of time could be assigned to the two sides, who would designate a questioner or questioners to occupy that time. Members may yield time to a colleague when their turn arises, but under Rule 11, each Member proceeds under the five minute rule, and the rule does not provide for waiver or exception. The Chair could permit very limited additional time to a Member only under unanimous consent, as is the practice in the House.

This morning the House and Senate are to meet in a very historic joint session to receive His Majesty King Hussein of the Hashemite Kingdom of Jordan and His Excellency Yitzhak Rabin, the Prime Minister of Israel. This joint session is without precedent, a most historic occasion, and at the proper time the Chair intends to declare a recess so that Members can attend.

Since we do have the joint session and must press ahead, the Chair will make a brief opening statement.

Today we will begin our review of the contacts between the White House, Treasury and Resolution Trust Corporation related to the so-called Whitewater affair.

During these past months there have been innumerable, inflammatory and absolutely false claims about one aspect or another of this matter. One by one these claims have proved to be outright lies, distortions or exaggerations. And yet not even the thorough and dispassionate work of the Independent Counsel has satisfied or silenced the more extreme critics, some of whom continue to make violent, untrue statements in the House and elsewhere.

The Independent Counsel has reached some important conclusions, and as we begin these hearings those conclusions should sober even the most passionate of the political bounty-hunters. These are the conclusions drawn by the Independent Counsel, and they provide us a true perspective:

One: Vincent Foster, who was then the Assistant White House Counsel, was not murdered, nor do any of the lurid tales and sensational rumors about his death contain a shred of truth.

Two: Mr. Foster did not kill himself because of any guilty knowledge about Whitewater. Instead, he was tormented by a series of accusatory, venomous editorials about his work on a different matter; he was exhausted and overworked and depressed to the point that the President himself sought to intervene and cheer him up; his family tried to get medical help, and Mr. Foster apparently did make some faltering steps to get that help.

Three: With regard to the celebrated, excruciatingly detailed contacts between the Treasury, White House and RTC about Whitewater, no laws were broken and there was no intent to influence or corrupt any investigation on the subject, and it is doubtful that any ethical standards were violated.

We will hear a great deal about those contacts, and many allegations will be raised. However, everyone should remember this: not a single one of those contacts was illegal, and there is no evidence that any one of them was intended to - let alone had the effect of - influencing any investigation of Madison Guaranty or its ties to Whitewater.

What really remains is whether those contacts were advisable.

The evidence will show some mistakes on the part of a few people. But these are human failings, hardly unique to this or any other human endeavor and hardly worthy of these extravagant proceedings.

Where mistakes were made, I expect they will readily be acknowledged. Where poor judgment existed, I expect this also will be freely acknowledged. In these respects, as in all others, I will raise the issues without fear or favor.

These hearings will be thorough, and I trust they will be fair; I will endeavor to be fair.

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(Recognize Mr. Leach)

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Our first witness is the White House Counsel, the Honorable Lloyd Cutler.

(Swear the witness)

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STATEMENT OF THE HONORABLE JAMES A. LEACH
MADISON/WHITEWATER HEARINGS
JULY 26, 1994

Mr. Chairman, today we begin the Committee's investigation of the Madison/Whitewater affair as mandated by House Resolution 394.

This initial part of the Whitewater probe is not about personal gain, nor criminal conduct; it is about public ethics.

The 1988 government-wide ethical rules contained the following direction to government employees that remains well founded today: "Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of his government. Each individual officer, employee, or advisor of government must help to earn and must honor that trust by his own integrity and conduct in all official actions ... simply avoiding criminal conduct is not the mark of public service." This is precisely what this aspect of the Whitewater probe is about.

Constitutionally it is the duty of Congress to oversee breaches of law or public ethics in the Executive Branch. During the 12 years of the so-called "divided government" of the Reagan/Bush era, the Legislative Branch took its Constitutionally-mandated oversight function seriously, as witnessed by the expansion in the size of its staff and the number of investigations undertaken.

Now both the Executive and the Legislative Branches of government are controlled by the same political party. The oversight mandate thus falls disproportionately upon Minority Members of the respective Committees for those areas of the Executive Branch over which they have jurisdiction. For the Minority on the Banking Committee not to assume responsibility in performing the oversight function with regard to the way in which the financial institutions of this country are managed and regulated would be to violate our oath to "support and defend the Constitution of the United States . . . and . . . well and faithfully discharge the duties of ... office."

If the Majority party refuses to uphold its responsibilities because of political embarrassment to its party's top elected official, the Minority party is left with the choice either of joining in a complicity of silence or pursuing investigations that run the danger of being partisan.

As for these hearings, the public can expect several surprises: 1) Fireworks will be limited; 2) disclosures will be more subtle than bombastic; 3) there will be no villains.

Regarding fireworks, it should be emphasized that the Minority chafes at the limited subject matter that the Majority party has allowed to be placed on the table. Nonetheless we are prepared to abide by the chair's rulings on subject restraints on the assumption that

hearings on the heart of Whitewater will at some point be held. Breaches of the public trust, after all, cannot for long be shielded in a democracy.

For the public to understand the context of these hearings, it should be noted they are being held in inverse chronological and substantive order. It is not Whitewater -- the issue of whether taxpayer dollars were diverted by a federally insured savings and loan and small business investment corporation to the advantage of a public official -- but rather the Administration's handling of criminal referrals related to Whitewater that is currently under review.

Discussion of Whitewater is off the table because the Majority party has crafted an approach, reflected in a leadership agreement, that allows hearings on only 5 percent of the Whitewater affair. However, neither the House Resolution, nor the leadership agreement, obviates the law. This committee is statutorily required to hold RTC oversight hearings and just as recommendations of the Special Counsel do not override constitutional obligations of Members, recommendations of congressional leadership do not take this committee off the hook for failure to hold oversight hearings on the RTC, in which the failure of an Arkansas S&L would be open for consideration.

Regarding disclosure, some may ask: Is this issue overblown?

If anyone considers public ethics incidental, the answer is, of course, "yes." On the other hand, many of us believe how the political game is played matters. Indeed, it is questionable whether in a democracy citizen respect for government can be maintained if as much attention isn't given to the "how" of process as the "what" of policy.

Some have asked: hasn't consideration of this issue been too long? The answer here is a most definitive "yes," but the Minority would query, who is responsible for the extended review: the party that simply asked that a hearing be held nine months ago or the party that at every stage has refused full disclosure, chosen to mislead the public, refused to provide standard oversight documentation, employed obfuscating redaction techniques, and to this day refuses public review of circumstances surrounding losses of public funds in the state of Arkansas.

What the Minority intends to underscore is that in a country of law it is important to assure accountability applies to all and that oaths of office relate to obligations undertaken to defend the Constitution and rule of law, not the political fortunes of any individual.

What the Minority intends to show is that the Executive Branch has been less than candid with the American people and that government of, by and for the people cannot credibly be carried out without candor.

In this regard, let me stress as well that this Committee will hear from a variety of witnesses, all of whom are decent, hardworking individuals who have chosen public service at

some sacrifice. The Minority has no desire to tarnish anyone's reputation, nor suggest or imply criminal conduct. This is not a trial. These hearings are about public ethics, pure and simple.

On the landscape of political scandals Whitewater may be a bump, but it speaks mountains about me-generation public ethics as well as single party control of certain states, cities and the U.S. Congress.

Whitewater is about the arrogance of power. It is a metaphor for privilege, for a government run by a new political class which takes short-cuts to power with end runs of the law.

Earlier this year I was asked by a BBC reporter if we Americans weren't making too much of this scandal. He raised a fair question. Compared with petty potentates around the world, who routinely walk off with millions and in some cases billions, conflicts of interest in American politics are of a petty variety. In this case, however, we have a situation where a multi-thousand dollar conflict of interest led to a multi-million dollar hit on the taxpayer. That is the meaning to the failure of Madison Guaranty Savings and Loan.

The way we in America keep our scandals from becoming too big is by holding people accountable when the amounts of money at issue are relatively small. It is the principles at issue, not the dollar amounts that matter.

In our kind of democracy ends simply don't justify means. Just as a conservative, who may believe government squanders resources, has no ethical right not to pay taxes, a liberal has no ethical basis to put the public's money in his own or his campaign's pocket just because he may have the arrogance to believe he is advancing a political creed that is in the public's interest.

It is simply not appropriate to shrug it off and say that conflict-ridden decision-making is the norm in small states. It isn't in Nebraska, South Dakota, or Iowa.

It is simply not appropriate to suggest Whitewater isn't a federal issue. It is. The U.S. taxpayer has lost millions; home owners have lost institutions that were established to serve their needs; minorities have found yet another instance in which a program designed to give them a crack at the American dream was redirected to serve the investment ego of a state political establishment.

ABDICATION OF CONGRESSIONAL RESPONSIBILITY

One of the extraordinary philosophical issues that underlie today's proceedings is the unprecedented abdication of Congressional oversight responsibility rationalized by the appointment of a Special Counsel. Never before has the Legislative Branch authorized an agent of the Executive Branch to limit the scope of Congressional oversight. Two weeks ago, in the context of consideration of a lawsuit I filed against the Resolution Trust Corporation

(RTC) and Office of Thrift Supervision (OTS), U.S. District Court Judge Charles Richey pointedly remarked that "I don't believe the independent counsel has the power to tell Congress what they have the power to look into and when." The Majority use of the "Fiske defense" as a shield for the Executive is a blatant abuse of separation of powers principles. It is a manifestation of single party rule in a single industry town for which the public has no choice but to take note.

There are, broadly, three things a prosecuting attorney can credibly request of Congress, which the Congress should take into consideration as it structures approaches to its responsibilities:

1. Where possible, any prosecuting attorney should be given an opportunity to put witnesses under oath first.
2. If possible, Congress should avoid giving immunity to key witnesses.
3. Where appropriate, prosecuting strategies should not be revealed.

With regard to immunity, as I have repeatedly indicated, the Minority has no intent, nor power to offer such. With regard to prosecutorial strategies, we would of course not intend to reveal any, even if we knew what they were.

As for the competitive aspect of jurisdictions, I would draw attention to the following passage from Mr. Walsh's report on the Iran-Contra probe:

When a conflict between the oversight and prosecutorial roles develops -- as plainly occurred in the Iran/Contra affair -- the law is clear that it is Congress that must prevail. This is no more than a recognition of the high political importance of Congress's responsibility. It also is the appropriate place to strike the balance, as a resolution of this conflict calls for the exercise of a seasoned political judgment that must take a broad view of the national interest.

The balance between the competitive jurisdictions must be evaluated in light of the historical irony that it was Senator Ervin's committee that revealed the existence of the Watergate tapes and that it was the Senate hearing earlier this year that revealed improper contacts between Executive Branch agencies and the White House. Hearings almost always reveal knowledge and perspective that is helpful to prosecutors. The major recent exception involved the excessive zeal of the Majority party to embarrass Presidents Reagan and Bush that caused it to sanction immunity for certain witnesses in the Iran-Contra probe.

RTC/OTS LITIGATION

For over seven months I have been seeking to no avail standard documents relating to the failure of Madison Guaranty Savings and Loan from the RTC and the OTS. After both

agencies formally rejected my final requests for documents patently relevant to committee oversight, I concluded, with reluctance, that I was left with no option except to authorize the initiation of litigation.

The decision to pursue litigation to obtain oversight documents was not made lightly. As the Ranking Member of the Committee on Banking, Finance and Urban Affairs, I am obligated under the Constitution, federal banking laws including the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), and House rules to oversee the actions of the OTS and RTC, and to assess implementation of FIRREA. Clearly encompassed within this oversight responsibility is a duty to investigate allegations of wrongdoing at failed thrift institutions, such as Madison Guaranty. During past Committee investigations of such institutions as Lincoln Savings and Loan Association of Irvine, California; Silverado Savings and Loan Association of Denver, Colorado; Centrust Savings and Loan Association of Miami, Florida; and Columbia Savings and Loan Association of Beverly Hills, California, which also underwent concomitant Justice Department probes, all appropriate documents were made available to the Committee.

Fundamentally at issue in Whitewater is full disclosure. Under the rubric of the Constitution, Congress has authority to seek and review documents of federal government agencies. Under precedent and due to decentralized practicalities, Congress has devolved this particular authority to Committees which have jurisdiction over various federal agencies and federal programs.

With the same political party in control of both Houses of Congress as well as the Executive Branch, the responsibility of Minority Members of committees with oversight responsibilities for Executive agencies takes on enhanced dimensions. The Constitution did not envisage that a Member would be required to default on his or her individual responsibilities simply because a political determination may be made by an Executive Branch agency to withhold documents pertaining to a particularly embarrassing circumstance.

In the past several decades, Congress has let the public down by not vigorously overseeing laws and policies that apply to the S&L industry. The costliness of this failure to perform vigorous oversight is evidenced by the quarter trillion dollar bill the taxpayer has been forced to honor, a small part of which relates to a failed institution in Arkansas, Madison Guaranty. The reason for this particular oversight investigation relates to the lessons that need to be learned, particularly as they apply to the role of state governments in regulating state-chartered institutions under the umbrella of a federalized deposit insurance program. Indeed, this Committee has under review a host of bills and regulatory approaches which an analysis of the failure of Madison would help illumine.

Procedurally, it should be noted that the Minority is currently engaged in one of the most profound checks and balances philosophical engagements with the Executive Branch in the modern history of the Congress. This engagement carries far greater implications than any judgment relating to a particular embarrassment of a particular public official at a particular time because at issue is precedent: whether in future circumstances the oversight

capacities of Congress can be hamstrung if the Majority party of Congress is the same as that in control of the Executive Branch and chooses to refrain from its oversight obligations in order not to embarrass its party's or leader's standings.

It is precisely because the Majority party in Congress has refused to uphold the law -- i.e., has yet to hold statutorily required oversight hearings -- and refused to uphold its constitutional responsibilities to oversee on a timely basis the Executive Branch that the role of the Minority is magnified. Just as in tolerant societies it is important to bend over backwards to protect the rights of ethnic, social and religious minorities, in a legislative environment it is imperative that majoritarian party biases not be allowed to run roughshod over Minority party rights.

The whole purpose of congressional oversight is for Congress to detect and have access to material that allows for detection of wrongdoing that would otherwise escape public attention.

The purpose of oversight is to expose information, even if it may prove embarrassing to government policy or government officials. To preclude disclosure is to employ closed society techniques and undercut fundamental tenets of American democracy. There are few more effective antidotes to impropriety and abuse of power in a democracy than sunshine.

In this context, the RTC's and OTS's determination to thwart legitimate congressional oversight is at odds with historical practice, the statutory mandate of FIRREA, relevant case law, and -- last but not least -- common sense prerequisites of open government in an open society. The sun must be allowed to shine in. Otherwise, abusive actions that cannot be reviewed will invite repetition. Shielding information to protect public officials from public accountability is not the American way.

VINCENT FOSTER

Regarding the death of Vincent Foster, which is one of the two subject matters prescribed as relevant to this hearing, I would stress that the Minority has no desire to probe the forensic aspects of the Fiske Report. While at the time of his death Mr. Foster had under active review a number of issues from Travelgate to preparation of the tax returns for the Whitewater Development Corporation, I accept, without qualification, the two fundamental premises of the Fiske Report -- that Vincent Foster suffered from depression, a disease that inexplicably darkens the spirit and the soul, and that his death was a suicide. While there may be certain unanswered questions regarding precipitating concerns and circumstances, it must be understood that in suicides this is more the norm than the exception. What matters in the end is not what troubled Vincent Foster in death but what a magnificent contribution he made to life. From all accounts Vincent Foster was an honorable man who ennobled public service.

PUBLIC CANDOR

As we begin to examine the facts and circumstances of the Madison/Whitewater

situation, a picture is emerging of an independent federal regulatory process which from the inception of this Administration, appears to have been hijacked by political forces; of a Congress which has refused to comply with the law; of a Committee which has thumbed its nose to a statute it originated; of an Administration which says one thing and does another; and of a great political party which has abandoned its open government tradition.

While the currently scheduled hearings may be limited in breadth, a preliminary review of the documents has revealed a striking lack of public condor at very high levels within the Executive Branch.

THE PRESIDENT

President Clinton has stated publicly many times that he intends to be cooperative with those involved in the Whitewater investigation. Specifically, during his March 24th press conference regarding Whitewater, the President stated that "...if Congress wants any information direct from us, we'll of course provide it to them in whatever way seems most appropriate. . . but I intend to be fully cooperative so that I can go back to work doing what I was hired to do." Despite these pledges, President Clinton and the agencies in his Administration have creatively used abstruse justifications to withhold information from Congress. Indeed, the Chairman of this Committee even went to the unprecedented extent of requesting that agencies of the U.S. Government not provide the Minority standard oversight material. And when certain materials related to this narrow part of the Whitewater probe were finally provided, the Majority determined that such be kept in a room manned by an armed guard despite the fact this material is not in any way classified on national security grounds.

These hearings will surely be duller than the O.J. Simpson tele-probe. There will be no bloodstained gloves revealed. Yet the documentary evidence that has surfaced in preparation for the hearing process indicates that the Administration has, with clear purpose, fudged distinctions between the truth and the full truth.

ALTMAN

For instance, on February 24, 1994, Deputy Treasury Secretary Roger Altman told the Senate Banking Committee that the only contact he could recall between the White House and Treasury-RTC was a February 2, 1994 "heads-up." Upon review, the Administration acknowledged there had been three contacts. According to the Special Counsel's report the number was more than 20. Witness interviews by this Committee now makes clear that contacts far exceed this number, commencing as early as March, 1993.

Particularly troubling is the fact that the White House was informed on September 29, 1993, of RTC-Kansas City's criminal referrals on Madison Guaranty which have been widely reported to name the Clintons as possible beneficiaries of illegal actions.

It has become evident that Treasury counsel Jean Hanson knew how many referrals were developed, knew the nature of the referrals, i.e., "check kiting," and warned the White House in advance of the imminent possibility they would be forwarded to the Justice Department. A reference to the Clinton 1984 gubernatorial campaign was made by Jean Hanson, Treasury General Counsel at the September 29th meeting with White House Counsel.

What happened in the wake of the September 29, 1993, meeting goes to the issue of the integrity of the system as well as candor. Within a few days of this meeting, the RTC Regional PLS Section Chief, after consultation with RTC-Washington, objected to the referrals which the RTC-Kansas City criminal investigations unit developed.

Within a month, a senior Kansas City criminal investigator was removed from the case. Within a few months, RTC-Washington demanded to review all the work product relating to the development of criminal referrals in regional offices. And a month later an official from RTC-Washington visited Kansas City to suggest that senior RTC officials in Washington wanted it understood that they wished to claim Whitewater was not responsible for any losses at Madison.

Courageously, Kansas City investigators refused to allow RTC-Washington to change the content of the referrals they developed. In the second week of October 1993 RTC-Kansas City forwarded them to the Justice Department without change.

The timely briefing of the White House by high ranking Department of Treasury and RTC employees must be understood in the context of the development and transmittal to the Justice Department of these referrals and in the context of the possibility Kansas City could be coerced into modifying or constrained from developing further referrals.

There are many elements of the Whitewater affair that are a bit esoteric. But the revelation that U.S. government officials briefed key White House aides on an existing criminal investigation which an independent regulatory agency was about to refer to the Department of Justice referencing the President and First Lady subverts one of the fundamental premises of American democracy -- that this is a country of laws and not men.

In America, no individual, whatever his or her rank, is privileged in the eyes of the law. No public official has the right to influence possible legal actions against him or herself. For this reason agencies of the government as well as the White House have precise rules that govern their employees.

The following standards (5 CFR Part 2635) apply to the Department of the Treasury and the RTC:

Subpart A -- General Provisions

2635.101 Basic Obligation of public service.

"(a) Public service is a public trust. Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

(b) General Principles. The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

(1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

Subpart E -- Impartiality in Performing Official Duties

2635.501 Overview

An employee should not participate in a particular matter involving specific parties if he determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter.

26535.502 Personal and business relationships.

(1) In considering whether a relationship would cause a reasonable person to question his impartiality, an employee may seek the assistance of his supervisor, an agency ethics official or the agency designee.

(2) An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

Subpart G -- Misuse of Position

2635.703 Use of nonpublic information

(a) Prohibition. An employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.

(b) Definition of nonpublic information. For purposes of this section, nonpublic information is information that the employee gains by reason of Federal employment and that he knows or reasonably should know has not been made available to the general public. It includes information that he knows or reasonably should know:

(1) Is routinely exempt from disclosure under 5 USC 552 or otherwise protected from disclosure by statute, Executive order or regulation;

(2) Is designated as confidential by an agency; or

(3) Has not actually been disseminated to the general public and is not authorized to be made available to the public on request.

(d) Authorization by agency designee. Where an employees' participation in a particular matter involving specific parties would not violate 18 USC 208(a), but would raise a question in the mind of a reasonable person about his impartiality, the agency designee may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. Factors which may be taken into consideration include:

(1) The nature of the relationship involved;

(2) The effect that resolution of the matter would have upon the financial interest of the person involved in the relationship;

(3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;

(4) The sensitivity of the matter;

(5) The difficulty of reassigning the matter to another employee; and

(6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's

impartiality.

The following standards (3 CFR 100.735) apply to the White House:

Subpart A -- General Standards

100.735-1 Purpose and scope

(a) The maintenance of the highest standards of honesty, integrity, impartiality, and conduct by regular employees and special Government employees is essential to assure the proper performance of Government business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of regular employees and special Government employees through informed judgement is indispensable to the maintenance of these standards.

100.735-4 General Standards of Conduct

(a) All employees shall conduct themselves on the job in such a manner that the work of their agency is efficiently accomplished and courtesy, consideration, and promptness are observed in dealings with Congress, the public and other governmental agencies.

(b) All employees shall conduct themselves off the job in such a manner as not to reflect adversely upon their agency or the Federal Service.

(c) In all circumstances employees shall conduct themselves so as to exemplify the highest standards of integrity. An employee shall avoid an action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

- (1) Using public office for private gain;
- (2) Giving preferential treatment to any person;
- (3) Impeding Government efficiency or economy;
- (4) Losing complete independence or impartiality;
- (5) Making a Government decision outside official channels; or
- (6) Affecting adversely the confidence of the public in the integrity of the Government.

100.735.8 Conflicts of Interest

It is equally important that each employee avoid becoming involved in situations which present the possibility, or even the appearance, that his official position might be used to his private advantage.

100.735-21 General conduct prejudicial to the Government

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

100.735-22 Miscellaneous statutory provision.

Each employee shall acquaint himself with each statute that relates to his ethical and other conduct as an employee of his agency and other conduct as an employee of his agency and of the Government. In particular, attention of employees is directed to the following statutory provisions.

(e) the prohibitions against (1) the disclosure of classified information (18 USC 798, 50 USC 783) and (2) the disclosure of confidential information (18 USC 1905).

(j) The prohibition against fraud or false statements in a Government matter (18 USC 1001).

The following is from a White House Ethics Memorandum, February 22, 1993:

* "It is important that all members of the White House staff recognize that there are significant restrictions on the kinds of communications a member of the White House staff may have with independent regulatory agencies, Executive agencies and their components. These restrictions apply with particular force where agencies have an adjudicative, investigative, enforcement, intelligence, or procurement function. Violations of these restrictions may result not only in significant embarrassment to the individual involved and the White House, but in legal sanctions against an individual as well."

* "There is generally no justification for any White House involvement in particular adjudicative or rulemaking proceedings at any agency."

* "White House staff members should avoid even the mere appearance of interest or influence."

* "Political figures and others may seek White House intervention in pending criminal and civil matters, but it undermines the administration of justice if the White House even appears to be interfering in such cases."

The following is from a White House Ethics Memorandum, March 9, 1993:

* "As a general rule, no member of the White House staff should contact any independent agency (or its components) with respect to any pending adjudicative or investigative matter."

* "As a general rule, no member of the White House staff should contact any executive branch agency (or its components) with respect to any pending adjudicative or investigative matter."

Perhaps White House, Treasury and RTC officials broke no laws. But clearly public ethics guidelines have been breached and there has been an extraordinary absence of simple truth.

Immediately in the wake of RTC-Kansas City's sending of the criminal referrals it developed to the Justice Department, an emergency strategy meeting appears to have been held at the White House. Those in attendance at the October 14, 1993, meeting were Jean Hanson, Secretary Bentsen's Press Secretary Jack DeVore, Secretary Bentsen's Chief of Staff Josh Steiner, Bernard Nussbaum, Bruce Lindsey, and White House communications Director Mark Gearan. Participants previously claimed that at this meeting, they did not discuss the substance of the criminal referrals, but only strategized on how to deal with press inquiries. This turns out not to be entirely accurate. Regarding the criminal referrals, a memo Lindsey wrote indicated the Treasury briefing was so extensive that someone even noted that an "RTC source said that it was a Republican" who gave Clinton the funds for one of the contributions listed in the criminal referrals.

In addition, the Lindsey memo indicates that "we checked our campaign records" concerning Clinton's 1985 fundraiser at Madison, records which Lindsey as well as Betsey Wright have both repeatedly stated do not exist.

Several months later, on February 2, 1994, another meeting took place at which Roger Altman, Jean Hanson, and Josh Steiner gave a briefing on the statute of limitations relating to possible civil claims arising out of the collapse of Madison Guaranty to Bernard Nussbaum, White House Deputy Chief of Staff Harold Ickes, and Maggie Williams. Mr. Altman stated that he initiated the meeting by calling Mack McLarty. Ms. Maggie Williams, Chief of Staff to the First Lady, apparently even asked if David Kendall, Clinton's personal attorney, could receive a similar briefing. Altman later asked RTC General Counsel Ellen Kulka if this would be appropriate, and she responded in "due course."

Two sets of talking points prepared for Secretary Altman for the February 2nd meeting indicate that his possible recusal from the case was on the agenda. At Secretary Altman's initial Senate testimony he failed to disclose that the recusal had come up at this meeting. Altman later suggested that the briefing he gave to the White House on February 2nd was limited to the statute of limitations issues and was similar to others that had been provided to

the press and to Congress. As Congressional staff had no recollection of such meetings, I wrote to Mr. Ryan of the RTC asking who else received that briefing in Congress. A letter came back listing certain meetings, suggesting that these meetings were similar to the meeting Altman had with the White House. In fact, the meetings with Congressional staff did not discuss the same subjects that were discussed between Altman and the White House, and internal RTC memos show that the RTC knew that no similar meetings with Congress had taken place. However, the RTC nonetheless appears, with intent, to have chosen to attempt to mislead this Member.

CUTLER

In media interviews this past week, the President's counsel, Lloyd Cutler, suggested that while there were too many contacts by White House personnel, no harm had been done. The President's lawyer misses the point. If RTC-Kansas City had not courageously stuck to its convictions, accountability would have been forsaken. As for precedent, the high level contacts, telephone calls, memoranda, et.al., invariably chill the chain of command in the agencies, and when knowledge of Washington concerns, no matter how carefully crafted and expressed, reaches down to regional offices where responsibility for the development of criminal referrals resides, the temperature plummets below freezing.

Mr. Cutler suggests that it is the norm for a White House to be notified of criminal referrals touching it because the President can thence be properly appraised of who he should not appropriately contact. Yet Mr. Cutler fails to note the unprecedented implication of a government official at any level being appraised of the development of criminal referrals at a time he is in a position of authority to influence the course of the investigation. In this regard, Mr. Cutler also fails to note the import of RTC-PLS's efforts to seek modifications in the referrals developed by the criminal investigations unit. Mr. Cutler also fails to explain how it is that despite having been briefed on the referrals, the White House, within a few days of the referrals being sent by RTC-Kansas City to the Justice Department, allowed the President to meet with Governor Jim Guy Tucker, who press inquiries had noted may have been mentioned as a subject of one of the criminal referrals. And, within a few months of initial notification, the President at his initiative met personally with a top regulator, the Comptroller of the Currency, to seek his assistance. The rationale for informing the President -- to the degree it may be credible -- was apparently lost on this lawyer occupant of the White House.

More profoundly, the Minority does not accept the assumption of Mr. Cutler that it is appropriate for the President or the White House to be informed of confidential criminal actions being contemplated within independent regulatory bodies, especially if such touches the White House. It is precisely because the highest ranking political figure has the prospect of influencing law enforcement that the case for inside notification is so totally unpersuasive.

Equally unpersuasive is Mr. Cutler's repeated suggestion that, because the Clintons were regarded as only potential witnesses, referral information was not sufficiently sensitive

to keep from the First Family. Experience clearly shows in the area of criminal investigations that an individual who is a witness at the early stages of that investigation can become a target after further investigation, especially if that witness was a beneficiary of a financial scheme under investigation. That possibility is reason alone to require all government officials, including White House counsel and staff, to keep from the First Family any nonpublic information relating to a criminal referral.

THE LUDWIG MEMORANDUM

In an apparent tactical effort to avoid disclosure from the Congress about a memorandum that had just come into the possession of the House and Senate Banking Committees, the Administration last week preemptively released a memorandum of Comptroller of the Currency Eugene Ludwig in which Ludwig notes that the President personally asked him for help on the Whitewater issue at the Renaissance weekend held during the New Years holiday in 1993-4 in Hilton Head. Although Ludwig suggests in his memo that he had made phone calls to White House officials about the request and said he had determined that it would be inappropriate to advise the President, interviews with White House counsel staff indicate that he actually requested information from them so that he could discuss the issue further with the President. The White House counsel's office decided no further contact with the President was appropriate and so advised Mr. Ludwig. Subsequently, however, Ludwig called the First Lady's chief of staff Maggie Williams to urge, he says, that Clinton be more forthcoming on Madison.

The President's approach to Mr. Ludwig was in the context of his being prominently considered as the leading candidate to become the country's top bank and thrift regulator under the Administration's single regulator proposal, then under active review. In the role of chief regulator under the Clinton plan, Ludwig would have had primary responsibility for any administrative enforcement proceedings against Madison.

THE STEINER DIARIES

According to a diary that has been provided the House and Senate Banking Committees, the Treasury Secretary's Chief of Staff, Joshua L. Steiner, made clear that White House staff wanted Mr. Altman to remain in control of the RTC. White House staff objected at the February 2 meeting to Altman's suggestion that he consider recusing himself on the issue and it wasn't until three weeks later when he was informed of an imminent New York Times editorial that Altman chose to step aside from involvement in regulatory matters related to Whitewater. Steiner writes that the President was angered by the decision.

In the background of the Altman circumstance is the fact that Altman held a dual appointment, serving in a Treasury position for which he was confirmed by the Senate and as interim head of the RTC under the Vacancy Act. The intent of the Vacancy Act that dual appointments not be allowed to stand more than four months was evaded due to the Administration's designation of an RTC head who was unable to be confirmed. Given the

recently disclosed press clippings that Altman provided the White House counsel's office in the spring of 1993 on Whitewater, and in light of the fact that he had been briefed by Bill Roelle of the RTC on the 1992 Whitewater referral in the same time frame, a reasonable question arises whether great care had been given at the very beginning of the Administration to ensuring that personal loyalists be assigned to the regulatory positions where the White House might have known it had liabilities.

HISTORICAL ANTECEDENTS: CONGRESSIONAL PROBES OF THE EXECUTIVE

A generally held presumption is that the scandals and tribulations of the present day are unique and that the general ethics of elected and appointed government officials have declined. Actually, allegations of conflict of interest and accusations of malfeasance in office have been around since the first federal Congress convened on March 4, 1789.

The very first select committee was formed by Congress in 1792 to probe an Indian victory the previous year over troops commanded by Major General St. Clair. And more than a century ago, during the Grant Administration, a special prosecutor was called to investigate whether the President's personal Secretary was involved in a ring of tax-evading whiskey distillers. Congressional investigations hit something of a high-water mark during Grant's two terms in the White House. Some 35 inquiries into a variety of subjects were launched on Capitol Hill between 1869 and 1877. And in the wake of the "Teapot Dome" scandal in the 1920s, Congress passed a joint resolution calling for a special prosecutor to probe charges of corrupt leasing of oil reserves by Harding Administration officials.

Over the course of two centuries, Congress has upheld its oversight mandate by formally investigating scandals that have involved Presidents, future Presidents, and related officials as both witnesses and targets. "In my opinion, the power of investigation is one of the most important powers of the Congress," Harry S. Truman declared in 1944. "The manner in which that power is exercised will largely determine the position and prestige of the Congress in the future," he said. This Committee's present inquiry into Madison and Whitewater is in keeping with the tradition of Congressional probes of the Executive and, as Truman presumed, is intended to uphold the position and prestige of this Congress.

Voluminous accounts of Executive Branch scandals detail Congressional hearings, Special or Select Committees, and Special Prosecutors through which Congress has exercised its Constitutional powers of oversight. A review of the last half century shows that the Truman Administration was rocked by a series of Congressional investigations into allegations which centered on high-level White House officials and friends' activities in the Reconstruction Finance Corporation and the IRS. Less than a decade later, the Eisenhower Administration was the subject of two major allegations of scandal revolving around personal gain and bribery. Other Congressional ethics investigations took place during the Kennedy, Johnson, Nixon, Ford, Carter, Reagan and Bush Administrations. The most notable special panel in modern times was the Senate Select Committee on Presidential Campaign Activities formed in 1973 to hold public hearings on Watergate. First Lady Hillary Rodham Clinton

and Bernard Nussbaum, former White House counsel, worked for the companion committee in the House, the Judiciary Committee.

While some scandals surrounding Administrations have been particularly far reaching, such as the 1987 Iran/Contra investigation, others, such as the "October Surprise" investigation into whether the Reagan campaign in 1980 negotiated with the Ayatollah to delay release of American hostages, appear bereft of merit.

Whitewater, as a monetary conflict, appears modest in relation to the attention it has been given. In terms of symbolism -- both of the disjunction of private and public ethics and as a case study in how not to handle scandal -- Whitewater takes on more significance. But fairness to the President demands that it be clear Whitewater is not Watergate. Accountability is in order; a Constitutional crisis is not.

There are indeed no precise historical analogies to Whitewater, in part because there is no precedent for the S&L debacle, where state-chartered, state-regulated institutions precipitated a series of insider bank heists unrivaled in history. While there are no close analogies to Whitewater, a review of the Teapot Dome case is instructive on the point of the past being prologue. Congress, for example, in 1923, during the Teapot Dome investigation had extreme difficulty obtaining documents from the Executive Branch while the Executive Branch and Congress were controlled by the same party, at that time Republican. The Teapot Dome case, like Whitewater, involved Congressional inquiry into allegations surrounding certain individuals in and related to the Executive Branch. An article written in 1965 by a veteran reporter, Bruce Bliven, who covered Teapot Dome stated that "on the theory that the investigations were just a Democratic plot, Republican members of the Committees did what they could to impede proceedings" and Bliven pointed out that Washington attached small importance to the investigations in the beginning.

Specifically, the Teapot dome scandal involved Cabinet-level bribery during the Harding Administration and the under-compensated transfer of federal oil reserves worth hundreds of millions of dollars. President Harding had appointed to a nexus of key government jobs individuals from his home state, individuals who collectively became known as the "Ohio Gang." Teapot Dome sent a Cabinet officer to prison and resulted in two "Ohio Gang" suicides; one of these suicides, that of Jess Smith, an aide to the Attorney General, preoccupied Washington. While Teapot Dome was widely depicted as characteristic of the sickly moral atmosphere of the times, most of the Ohio Gang were acquitted of alleged criminal activity.

According to the same historical account, "any member of Congress who expressed public criticism was subject to harassment. Senator La Follette's office was rifled; a detective went to Montana to investigate Senator Wheeler with the hope, as he openly admitted, of finding something there that could be used to blackmail him; and Senator Walsh was called a scandalmonger and a character assassin; his past life was investigated, his phones tapped, his mail opened, and anonymous letters threatened his life."

The Senators were not intimidated, however, and proceeded to conduct hearings on Teapot Dome which resulted in two landmark court cases being decided which further established the right of Congress to conduct thorough oversight hearings. In McGrain v. Daugherty, 273 U.S. 135 (1927) the Supreme Court upheld the Senate's authority to investigate the Department of Justice by rejecting a petition by a witness who failed to respond to a subpoena stating his belief that the Senate had exceeded its constitutional powers. And in the second Teapot Dome case, Sinclair v. United States, 279 U.S. 263 (1929) the Supreme Court rejected in unequivocal terms a witness's contention that the pendency of lawsuits gave him an excuse for withholding information from the Senate and found him criminally liable for obstructing a congressional investigation. These cases lay the foundation for all subsequent congressional investigations, including this one, where we seek full disclosure and truthful, unabridged answers to the questions put to witnesses.

The parting thoughts of Teapot Dome reporter Bliven, as he pondered on the significance of the scandal deserve certain attention today. Bliven posed the question: "Could we have a repetition of the Harding or Grant scandals today? It seems to me unlikely," he said. "The Grant and Harding Administrations had several elements in common, and I feel that all of them, in combination are essential for wholesale corruption. First, you must have a period of moral relaxation. Second, you must have a President in the White House who is complacent, ill-informed, and a poor judge of the integrity of his close friends. Third, and perhaps most important, the country must be unaware, before electing him, of these aspects of a nominee's character."

Whitewater may not be Teapot Dome or Watergate, but it underscores the central role of character in leadership, which apparently is just as hard to judge in a post-television as pre-radio age.

What this hearing is about is beginning the process of rekindling the trust between the people and their government upon which the health of our democratic system of governance depends.

It is no coincidence that the word "trust" appears in the nation's motto as well as in the names of so many financial institutions. Both our political and financial systems depend on the trust of those whom they serve. The American people need to be able to count on the integrity of the institutions and processes that structure their lives, just as they need to have confidence in the probity of the individuals who lead and control these institutions and processes.

This trust is essential because our audacious experiment in government of, by and for the people began with the simple but momentous substitution of persuasion for coercion as the method by which we would be governed. We have concluded that ideas openly debated, not power arbitrarily imposed, will be the source of the authority by which society will be structured.

In this century, free men and women following freely-elected leaders have defeated the two great totalitarianisms of hate -- fascism and communism. Now the greatest challenge to our future comes from within rather than from without. The issue is moral values -- distinctions between right and wrong. Government, to be legitimate, must be based on truth-saying, not sooth-saying.

For representative democracy to function, the people must be confident that the information on which they are making their decisions in the voting booth is accurate and complete. Equally important, they must be confident that the debates in which the meaning of this information is measured are open and untrammelled.

To sustain this confidence the founders constructed a system of checks and balances that is at the heart of our Constitution. The experiment Lincoln called "the last, best hope of earth" is based upon faith in the Gospel's declaration that "the truth shall make you free;" it is built on Jefferson's conviction "that truth is great and will prevail if left to herself; that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapon, free argument and debate. . ."

Mr. Chairman, in the interviews jointly conducted by the Majority and Minority many witnesses have repeatedly claimed that they cannot recall the events and discussions in question. While their lack of recollection hardly advances the public's right to know, it certainly needs to be evaluated in the context of the many documents that demonstrate a pattern of decisions that appear to have mislead the public on who knew what, when and where. Accordingly, Mr. Chairman, I ask unanimous consent to place many of those documents on the record.

There are advantages to undivided government and the ending of the gridlock which sometimes eventuates when a Congress is not controlled by the President's political party. Nevertheless, arduous oversight is too often a casualty of one party governance, especially when the Majority party lacks the desire or the backbone to pursue oversight policies potentially embarrassing to its leadership.

Government is based on trust; trust is a product of candor; candor appears best impelled in our system of checks and balances when oversight is rigorous. That is the reason hearings of this nature are so vital to the functioning of our democracy.

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Index of Documents Attached to Mr. Leach's Statement

Tab A	Draft Q's and A's prepared for The Honorable Lloyd Bentsen prior to his appearance before the House Appropriations Committee on March 8, 1994. These are Jean Hanson's comments to the drafts. Significantly, the Hanson comments suggest that Bentsen was: 1) told of the criminal referrals in September, 1993; 2) consulted in advance about the February 2, 1994, White House meeting attended by Altman and Hanson; and, 3) received a briefing on the statute of limitations in February, 1994, similar to the one given the White House. Finally, the drafts indicate that there was a fourth White House meeting on February 3, 1994 attended by Mr. Altman. The comments "not seen by Secretary" are written by Michael Levy on the morning of the March 8, 1994.
TAB B	In a March 20 draft of Q's and A's for Bentsen, a proposed answer is inserted using the investigation of Special Counsel Fiske as an excuse not to respond.
TAB C	In what is believed to be Secretary Bentsen's own handwriting, this document suggests that he was not invited to a White House meeting on Whitewater/ Madison by Christine Varney (White House Secretary to the Cabinet), held in early January, 1994, because of his position as Chairperson of the Thrift Depositor Protection Oversight Board.
TAB D	These documents relate to Bentsen's answer at a March 10 hearing before House Appropriations. Bentsen declined to answer if he knew about any of the meetings in advance. Instead, Bentsen said that on advice of Fiske, he could not answer. Later Fiske writes that "he is not instructing or advising any member of the Administration to testify before Congress." A March 20 draft of Bentsen's Q's and A's testimony indicates that Bentsen never personally talked to Fiske.
TAB E	A September 30, 1993, memo from Jean Hanson to Roger Altman indicates that she told Bentsen about the Rose Law Firm matters shortly after her briefing with Roelle. Also, she writes that she has told Nussbaum and Sloan at the White House. Finally, she states, she has asked Bill Roelle of the RTC to keep her informed, and asks Altman, "is there anything else we should be doing?"
TAB F	Hanson's schedule on February 1, 1994. Indicates a meeting with Secretary Bentsen.
TAB G	This document is from a retrieved computer file at the Department of the Treasury. At the bottom of the January 7, 1994, memo to

Altman, Hanson notes that the coordination between the White House and Justice on these issues by definition raises legal issues that must be addressed. Hanson also states that she does not understand why there is no White House lawyer on the "team." According to her, the "team" needs legal advice from competent lawyers with damage control experience.

TAB H Jean Hanson "To Do" list and notes. This document indicates contacts with Bill Roelle from the RTC. The document also shows a series of phone calls with Roelle and with White House personnel. The October 15 entry indicates a contact with Glion Curtis, then acting General Counsel for the RTC.

TAB I Two sets of talking points for Roger Altman for the White House February 2, 1994, meeting. One set indicates that the recusal issue was on the agenda.

TAB J Document produced from the office of Bruce Lindsey, Assistant and Senior Advisor to the President of the United States. The handwritten notes are those of Lindsey, recounting his version of what occurred at the February 2, 1994, meeting between Treasury and White House officials. The notes indicate that Ms. Maggie Williams, Chief of Staff for the First Lady of the United States, asked Altman if the RTC would brief the privately-retained attorneys of the legal process regarding the statute of limitations as applicable to Madison Guaranty Savings and Loan.

TAB K A retrieved computer file of Jean Leary, Department of the Treasury. A summary of the February 2, 1994, meeting in which Altman is asked to brief the President's lawyer. He later asks Ellen Kulka if this would be appropriate, and she says in "due course." Previous news accounts had implied that Kulka said no.

A retrieved computer file of Robin Webb, Department of the Treasury. The document indicates that Altman briefed Secretary Bentsen in February regarding Madison, and told Bentsen he would not recuse himself.

TAB L Bruce Lindsey's memo of October 20, 1993, to file recording the topics discussed at the October 14th meeting. The memo includes information obtained by Lindsey from a democratic office in Little Rock on campaign contributions. Maggie Williams and Bill Kennedy are copied on the memo.

TAB M From the files of Dee Dee Meyers, this document recounts the "Tic Toc" of White House meetings.

Also, under this tab, are Cliff Sloan's notes, relating events from

telephone conversations with Jean Hanson on September 30, 1993, and October 7, 1993. Also, a memo to Bruce Lindsey from Cliff Sloan on October 7, 1993.

- TAB N Handwritten notes of Bruce Lindsey about conversations with Lindsey, Sloan, and Eggleston, and handwritten notes of Bruce Lindsey of a meeting on October 14, 1993.

- TAB O Associate Counsel Cliff Sloan's phone bill returning call of Eugene Ludwig seeking information on Madison Guaranty so he could talk to the President, both of whom were attending the Renaissance weekend.

- TAB P White House Staff Secretary John Podesta phone logs of contacts with the Treasury Department about Whitewater and Madison.

- TAB Q Roger Altman faxes to Bernie Nussbaum articles about Whitewater in March, 1993. This is approximately a week after Bill Roelle informs Altman of the 1992 criminal referral, during the first meeting he chairs at the RTC after being approved as Acting CEO.

- TAB R This document indicates that the Treasury Department's Assistant Secretary for Public Affairs, Joan Logue-Kinder, told the RTC's public affairs director, Steve Katsanos, to call the First Lady's press secretary.

- TAB S Jack Ryan letter to Jim Leach. Roger Altman said that the briefing he gave to the White House on February 2, 1994 was similar to others that had been provided to the press and the Congress. Leach wrote Ryan asking who else received that briefing in the Congress. Ryan's letter suggests that these meetings were similar. In fact, a Hanson to Altman memo indicates that the only similar briefing was one phone call with a Senate Banking Committee staff person. An internal RTC memo indicates that all of the other meetings concerned document requests.

- TAB T Memorandum from Eugene Ludwig, head of the OCC in response to the Grand Jury subpoena. Ludwig states that the President asked him to help out with Whitewater during the Renaissance New Year's Weekend 1993/1994.

FOIA requests from the Washington Post and Baltimore Sun that Ludwig faxed to the White House on December 12, 1993.

- TAB U Excerpts from diary of Josh Steiner.

- TAB V Excerpts from diary of Roger Altman.

TAB W

Draft of March 3 Press Statement of Lloyd Bentsen, believed to be in his own handwriting.

The actual statement Bentsen delivered on March 3, 1994.

A

To: Dennis Foreman

3/7/94

These are my comments.

D R A F T -- March 7, 1994

Q. What do you know about Madison Guaranty?

Please see that Secretary Bentzen receives a copy. *Jean Hanson*

A. I know nothing about the details of Madison

Guaranty ~~other than what I have read in the press~~

As Chairman of the Oversight Board, I take my responsibilities very seriously. Congress limited the Board's and my involvement solely to policy oversight over the RTC and instructed that neither it nor I become involved in case-specific matters involving individual institutions or the day-to-day operations of the RTC.

[Background: The Conference Report accompanying FIRREA (Aug. 4, 1989), provides at page 410:

"The Oversight Board will review and have overall responsibility for the RTC's activities. The Oversight Board will not, however, be involved in or responsible for case specific matters involving individual institutions, specific asset dispositions or generally the day-to-day operations of the RTC."]

D R A F T -- March 7, 1994

Q. When did you first learn about these meetings?

A. [Your answer.]

see P. 27

D R A F T -- March 7, 1994

Q. When did Treasury's ethics officials first learn of these meetings? Did they approve the meetings?

A. ~~I don't know~~ and I have not conducted my own fact-finding on this. I have directed Treasury's staff to cooperate fully with OGE to assemble ~~and~~ the facts and circumstances concerning these meetings.

I understand that the Treasury's ethics officer was consulted with respect to the Third meeting before it occurred.

D R A F T -- March 7, 1994

Q. What was said in these meetings?

A. As I have said before, rather than conduct my own fact-finding on this matter, I have directed Treasury's staff to fully cooperate with OGE to assemble the facts and circumstances of these meetings.

D R A F T -- March 7, 1994

JOSHUA STEINER

Q. Mr. Steiner is your chief of staff. He didn't tell you about the meetings?

A. Mr. Steiner ~~and my entire staff~~ is well aware that the Oversight Board is statutorily responsible for reviewing the overall strategies, policies and goals of the RTC. It does not have any authority to involve itself in case-specific matters such as Madison Guaranty.

*I don't know
if this is true.*

D R A F T -- March 7, 1994

Q. Why would Mr. Steiner be involved in RTC matters?

A. Mr. Steiner is not involved in RTC matters. He is, however, responsible for liaison between the Treasury Department and the White House -- and attends many meetings with White House staff.

Q. Why would Mr. Steiner be involved in meetings with the White House?

A. One of Mr. Steiner's responsibilities is to serve as liaison between the Department and the White House. He attends many meetings with White House staff.

Insert 18A

I now believe that Ms. Hanson and Mr. Altman consulted with me in advance of the White House meeting on February 2, 1994, that was the subject of Mr. Altman's February 24 Senate testimony. I had not previously recollected that discussion.

D R A F T -- March 7, 1994

Q. Did you know of the meetings before they occurred?

A. ~~No, and I don't find anything wrong with that because as Chairman of the Oversight Board -- and my staff knows this -- I am precluded from becoming involved in case-specific matter such as Madison Guaranty.~~

See Insert 18A

D R A F T -- March 7, 1994

Q. Why would Ms. Hanson be involved in meetings with the White House? on Madison Guaranty.

My understanding is that

A. ~~Ms. Hanson is a senior official in the Administration and has numerous contacts with senior officials throughout the Administration, including the White House.~~

Ms. Hanson attended three ~~White House~~ White House meetings regarding Madison ~~as the result of requests by senior Treasury officials~~ as the result of a determination by senior Treasury officials that her attendance was appropriate.

Insert 18A

I now believe that Ms. Hanson and Mr. Altman consulted with me in advance of the White House meeting on February 2, 1994, that was the subject of Mr. Altman's February 24 Senate testimony. I had not previously recollected that discussion.

Druff
not seen
by Sandy

D R A F T -- March 7, 1994

Q. How come you didn't know about these meetings in advance? Would you have approved them?

*See
insert
164*

A. I did not know about these meetings in advance because there is no need for me to know about an area in which Congress has specifically instructed me as Chairman of the Oversight Board not to become involved.

Would I have approved the meetings had I known of them in advance? I am not going to deal in hypotheticals, but as President Clinton has said, in retrospect it would have been best for all concerned if these meetings had not taken place.

[Background: The Conference Report accompanying FIRREA (Aug. 4, 1989), provides at page 410:

"The Oversight Board will review and have overall responsibility for the RTC's activities. The Oversight Board will not, however, be involved in or responsible for case specific matters involving individual institutions, specific asset

D R A F T -- March 7, 1994

dispositions or generally the day-to-day operations
of the RTC."}]

D R A F T -- March 7, 1994

Q. Will you make OGE's report public?

A. Yes, as long as it's okay with the Special Counsel.

D R A F T -- March 7, 1994

- Q. The White House Counsel Bernard Nussbaum has resigned as a result of these meetings. Shouldn't Treasury's Deputy Secretary, General Counsel and Chief of Staff -- who participated in these meetings -- also resign?
- A. I can't say why Mr. Nussbaum resigned -- that is something for him to say. I see no reason for Roger Altman, Jean Hanson or Josh Steiner to resign. As I said last Thursday, they have my full confidence. I have asked the OGE to review the facts and circumstances surrounding this matter and report back to me.

Add insert 32A
32B
32C

Insert 32A

Q: Why did Ms. Hanson not interrupt Mr. Altman at the February 24 Senate Hearing and remind him of the meetings last fall?

A: I have not discussed this with Ms. Hanson, but knowing her as I do, I am satisfied that there was no intention of concealing any information.

Insert 32B

Q: Are you aware of any other meetings or conversations about Madison Guaranty with the White House?

A: I understand that there was a fourth meeting February 3 which Mr. Altman attended but Ms. Hanson did not. [The Secretary should consult with Mr. Altman on this meeting.] [Any other conversations, to the Secretary's knowledge?]

Griff -

Secret

ven

draft - not seen by
Insert 32C

Q: What conversations have you had with Deputy Secretary Altman on Madison Guaranty situation? *See in*

A: Mr. Altman and I have had several brief conversations relating to Madison Guaranty. *(let him see) for Feb 27*

- o In late September, I believe, he told me that there was a possibility that criminal referrals might be made by the RTC that could receive press attention. [Correct?]
- o Early this month he and Ms. Hanson described to me generally the process the RTC was undertaking in its review of Madison Guaranty in light of the then impending February 28th date. He also told me that he had received congressional inquiries suggesting that he recuse himself from the decision. He said that he intended to recuse himself and was going to talk with the White House.
- o Sometime after that, he told me that he had decided that he would not recuse himself.

D R A F T — March 8, 1994

Q. When did you first learn about these meetings?

Hansen's suggested answer:

A. I now believe that Ms. Hanson and Mr. Altman consulted with me in advance of the White House meeting on February 2, 1994, that was mentioned by Mr. Altman in his February 24, 1994 testimony. I had not previously recollected that discussion.

D R A F T – March 8, 1994

Q. When did you first learn about these meetings?

Alternative answer 1:

A. I'm almost certain that I didn't learn about the fall meetings until the same time the media did. After continued reflection, I am not certain whether I was told about the February meeting before it occurred.

D R A F T -- March 8, 1994

Q. When did you first learn about these meetings?

Alternative answer 2:

A. I don't believe I knew about any of them until sometime within the last couple of weeks.

D R A F T — March 8, 1994

Q. What was said in these meetings?

A. As I have said before, rather than conduct my own fact-finding on this matter, I have directed Treasury's staff to fully cooperate with OGE to assemble the facts and circumstances of these meetings.

B

SECRETARY LEARNED ABOUT MEETINGS?

Q. When did you first learn about these meetings?

A. ???

In order to be sure about my answer, I would need to ~~consult~~ talk to the people involved and consult my records. I have decided ~~to~~ not to do so at this time. As I have stated, Mr. Fiske is doing the fact-finding and we're cooperating completely with his inquiries.

C

DRAFT CHRONOLOGY

- In late September, I believe, he told me that there was a possibility that criminal referrals might be made by the RTC that could receive press attention.
- In October I was told of press inquiries.
- Early this month he described to me generally the process the RTC was undertaking in its review of Madison Guaranty in light of the Impending February 28th date. he also told me that he had received congressional inquiries suggesting that he recuse himself from the decision. he said that he was reserving judgement on the recusal.
- Sometime after that, he told me that he had decided that he would not recuse himself.
- In January or February, I was advised by Christine Varney that I would not be invited to a discussion of whitewater matters because of my Chairmanship of the RTC Oversight Board.

she never mentioned
Whitewater - she told
me that the subject of
the meeting was one
that they felt I should
not attend because of my
chair of the RTC Oversight
Brd. I did not know the
subject of the meeting.

18

D

ROBERT L. LIVINGSTON
ST. LOUIS, MISSOURI

APPROPRIATIONS COMMITTEE
SUBCOMMITTEE
ON FOREIGN
OPERATIONS

HOUSE ADMINISTRATION
COMMITTEE



Congress of the United States
House of Representatives

Washington, DC 20515-1801

PLEASE REPLY TO:

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Room 1209
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WASHINGTON, DC 20515
202 225-6616
444 GFD 125-6729
- ☐ DISTRICT OFFICE
ATTORNEY OFFICE
111 WYOMING BUILDING
SUITE 700
NEWARK, NJ 07102
908 526-7763
FAX FROM 562-3687
- ☐ HARRISBURG OFFICE
200 FULTON STREET
HARRISBURG, PA 17101
717 641-6616
FAX FROM 643-6677
HARRISBURG ONLY
717 641-6677

Mr. Robert Fiske
Office of Independent Counsel
Two Financial Center
10825 Financial Center Parkway
Little Rock, Arkansas 72211

Dear Mr. Fiske:

Yesterday, Secretary of the Treasury Lloyd Bentsen testified before the House Appropriations Subcommittee on Foreign Operations. At the conclusion of the hearing, I asked him whether or not he had known in advance of, or subsequent to, Roger Altman's improper discussions with White House personnel about the Whitewater investigation.

Secretary Bentsen immediately read a lengthy two page written answer which essentially said that you had advised people in the Clinton Administration to defer their testimony pending their investigation. I thanked The Secretary for his statement and then specifically asked whether or not he knew in advance that Altman was going to engage in discussions with the White House personnel.

The Secretary paused and said that on the advice of the Special Counsel he must refuse to answer that question.

Please tell me if in fact you have advised the Cabinet officials of the Clinton Administration not to testify before Congress on any aspect of the Whitewater matter, and if so, on what grounds do you base such advice?

My own background in criminal prosecution leads me to question such advice. Clinton officials might refuse to testify upon advice of their own counsel by way of an invocation of the Fifth Amendment to the Constitution of the United States forbidding compelled self-incrimination. Since no executive privilege was invoked by The Secretary, I am at a loss to understand the reasons for your instruction.



U.S. Department of Justice

Office of the Independent Counsel

Washington, D.C. 20530

March 18, 1994

The Honorable Robert L. Livingston
Congress of the United States
House of Representatives
Room 2368
Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Livingston:

I received your letter of March 11, 1994 yesterday.

As you know, I have expressed my position to both the Senate and the House of Representatives concerning the impact of Congressional hearings and Congressional testimony on my investigation. I have also expressed our preference that an investigation by the U.S. Office of Government Ethics be deferred until after we have completed our investigation, because I believe overlapping investigations at the same time would make our job more difficult (see enclosed March 15, 1994 letter to Jane S. Ley, Deputy General Counsel, U.S. Office of Government Ethics). However, I am not instructing or advising any member of the Administration not to testify before Congress.

I hope this helps clarify the matter.

Respectfully yours,

ROBERT B. FISKE, JR.
Independent Counsel

Enclosure



U.S. Department of Justice

Office of the Independent Counsel

Washington, D.C. 20530

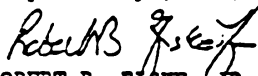
March 18, 1994

The Honorable Lloyd Bentsen
Secretary of the Treasury
Office of the Secretary of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Bentsen:

I am enclosing herewith a letter that I received yesterday from Congressman Livingston. I have responded to Congressman Livingston by clarifying my position in this matter and my response is also enclosed. I do not intend to instruct or advise any member of the Administration not to testify before Congress.

Respectfully yours,


ROBERT B. FISKE, JR.
Independent Counsel

Enclosures

FISKE QUESTION

- Q. Why did you cite advice from Independent Counsel Fiske in declining to answer Congressman Livingston's question about whether you knew in advance of Mr. Altman's meeting with the White House that it was going to occur when you hadn't received such advice from Mr. Fiske?
- A. It is true that Mr. Fiske had not advised me personally not to discuss Madison matters in Congressional testimony, and it was not my intention to suggest to Congressman Livingston that he had. However, I knew that Mr. Fiske had asked that Congress put off hearings into these matters because of his concern that they would interfere with his investigation. I believe that the Independent Counsel's investigation is the most appropriate way to ensure a full examination and fair outcome, and I decided to avoid contributing to interference with Mr. Fiske's efforts.

[If pressed, quote from Fiske letter:]

23

MARCH 20 DRAFT

E



GENERAL COUNSEL

DEPARTMENT OF THE TREASURY
WASHINGTON

411

September 30, 1993

MEMORANDUM FOR ROGER C. ALTMAN
DEPUTY SECRETARYFROM: JEAN E. HANSEN
SUBJECT: The Rose Law Firm

Steve Katsanos has talked with Sue Schmidt (See attached RTC Early Bird).

I have spoken with the Secretary and also with Bernie Nussbaum and Cliff Sloan.

I have asked Bill Roelle to keep me informed. Is there anything else you think we should be doing?

Attachment



RTC Early Bird

622-2800



Washington, D.C.

Thursday, September 30, 1981

The following are emerging news stories the Office of Corporate Communications anticipates will be published in the days and weeks ahead. This report is for internal use only. Staff should not inform reporters of stories identified here that are being prepared by competitors.

- The opposition of Jesse Jackson's Rainbow Coalition to Stanley Tate's nomination will be reported in tomorrow's *Washington Post*.

- Senator Riegle's demand that Stanley Tate meet with each of the "whistleblowers" in last week's hearing should get significant speculative coverage concerning whether Riegle's move will frustrate the nominee and provoke his withdrawal.

- The Rose Law Firm's alleged undisclosed conflicts of interest, and internal RTC sources' suggestions that multiple referrals to the Justice Department link the firm's members, friends, and loans to insolvent Sile, are being pursued by the *Washington Post* and the *Associated Press*.

-- Steve Katsanos

- Several news organizations will likely report that today's deadline for RTC resolution authority will be an uneventful passage due to the fact that the Senate has named conferees and funding legislation should be approved soon.

-- Office of Corporate Communications

- Sandra Nobles' promotion to Acting Director of Securitization should be the focus of an upcoming *National Mortgage News* story on the RTC's securitization program.

-- Anne Freeman

- The RTC's use of the law firm Holland and Hart in a suit against Deloitte and Touche for its involvement with Otero Savings and Loan, Colorado Springs, is being explored by *Westword*, a Denver newspaper. According to Deloitte's counsel, Holland and Hart may have represented Otero Savings on transactions that caused losses to the institution.

-- Felisa Neuringer

F

HANSON

Tuesday, February 1, 1994

8:30 - Bentsen staff

10:00 - RTC w/Levy, Newman
in Altman's office11:00 - ~~CA Trust~~12:30 - ~~RTC lunch~~2:45 - ~~Sec. Bentsen~~2:30 - Semiannual RTC rep.
& whistleblowers
w/Pe, Joan, Robin

3:00 - PERSONAL

4:00 - information
R

5771

G

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FILE - "A:45.BEN"

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b.....h.....#.....January 7, 1994.....The Honorable Jamie Gorelick, General
 Counsel, Department of Defense, 1600 Defense, Pentagon, Washington, D.C. 20301.
 1600...Dear Jamie:.....My thanks to you and Colonel Dennis Corrigan for
 your quick assistance on the Army regulations. I hope we can someday return the
 favor.....Colonel Corrigan had indicated that a copy of Army Regulation
 7.20 would be obtainable. Although we do not need a copy urgently, we would
 like to have one for our files. If a copy could be located and sent to me,
 we would be most appreciative.....Best regards.....
h.h.#.....(.....Sincerely.....
h.h.#.....(.....Jean E. Hanson.....0
 *0*0*.....h.....#.....January 7, 1994.....?

SECRETARY BENTSEN..FROM: JEAN E. HANSON..SUBJECT: MEMORANDUM FOR S
 Matters.....Following up on our conversation yesterday, I am passing on
 to you some information I have received.....?
 Army Regulations.....I am told by the Department of Defense that during the
 1940s, an Army regulation permitted servicemen to purchase their firearms at a
 salvage cost for sentimental reasons. We are obtaining a copy of the regulation.
 The guess is that, in all likelihood, the cost was paid through a deduction
 from final paychecks. In any event, your possession of your .45 is consistent
 with the regulations that were in effect at the time.....?
 ..2.Registrations.....Your recollection was correct. Possession
 of handguns in the District of Columbia was grandfathered in 1973 for hand
 guns that were then held and registered.Out of an abundance of caution,
 I suggest that we double check all the registrations that you hold since
 this is a question that may very well arise.....?.....* * *
?.....Tax Court.....On an unrelated note, I would
 like to make sure that before you leave I have an opportunity to talk with
 you about the Tax Court vacancy and Maurice Foley so that I understand your
 views. I understand from Ed Knight that you wanted to weigh in on this before
 you left. That's great because we hope to have completed interviewing by the
 time you return.....I am in on Monday and Tuesday, or you can call me at
 home over the weekend if you prefer (202.966.8718).....h).....0*0*0*...
h.....#.....January 7, 1994.....MEMORANDUM FOR DEPUTY SECRETARY A
 LTMAN..FROM: JEAN E. HANSON..SUBJECT: Madison Guaranty.....
I find the attached very troubling. I do not understand why no lawyer from
 the White House Counsel is on the new "team". The coordination between the White
 House and Justice on these issues by definition raises legal issues that must
 be addressed. The team needs legal advice from competent lawyers with damage
 control experience. However, it appears that the people are not even talking
 to each other. Presumably, talking with each other would decrease the likelihood
 that the senior people would blame each other in the press.....I
 give you my views for what they are worth because I don't know to whom else I
 should give them. Continuing press reports like this one, in my view, will be
 damaging and should be able to be remedied.

4832

H



9/27/43

[REDACTED]

[REDACTED]

[REDACTED]

{ * Bill Roella
Madison

[REDACTED]

[REDACTED]

Bill Roella 416-7577

[REDACTED]

[REDACTED]

[REDACTED]

9/28/93

1. [REDACTED]
- 2. [REDACTED]
3. [REDACTED]
- 4. [REDACTED]
- 5. [REDACTED]
- 6. [REDACTED]
7. *Bernie Nussbaum*
- 8. [REDACTED]
9. [REDACTED]
- > 10. [REDACTED]
- 11. [REDACTED]
- 12. [REDACTED]
- 13. [REDACTED]
- 14. [REDACTED]
15. [REDACTED]
16. [REDACTED]
- => 17. [REDACTED]
18. [REDACTED]
19. [REDACTED]
20. [REDACTED]
21. [REDACTED]
22. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Bernie Nussbaum

*Dan - McDougal -
Madison Savings*

32

10/1/43

1. [REDACTED]

2. [REDACTED]

3. [REDACTED]

4. Bill Koelle 416.9579

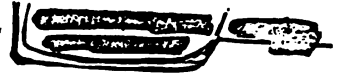
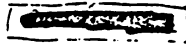
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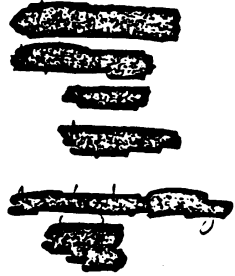
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10/6/93

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→ 9 clw. referrals

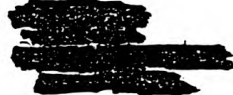
20. Bu Roelle - Sue Schmidt
Kansas City

21. [redacted]

22. [redacted]

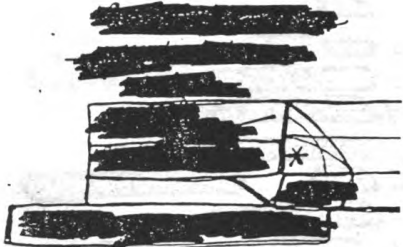
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10/1/43

- 1. [REDACTED]
- 2. [REDACTED]
- 3. [REDACTED]
- 4. [REDACTED]
- 5. [REDACTED]
- 6. [REDACTED]



- 7. [REDACTED]
- 8. [REDACTED]

*B. Koelle -
Sta. Referrals

- 9. [REDACTED]
- 10. [REDACTED]

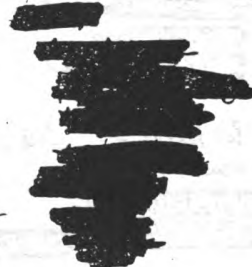


11. Cliff Sloan 456-6788

- 12. [REDACTED]
- 13. [REDACTED]
- 14. [REDACTED]
- 15. [REDACTED]



- 16. [REDACTED]
- 17. [REDACTED]
- 18. [REDACTED]
- 19. [REDACTED]



- 20. [REDACTED]
- 21. [REDACTED]

30

35

10/10/63

1. [REDACTED]
2. [REDACTED]
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- 4. [REDACTED]
5. [REDACTED]
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9. [REDACTED]
10. [REDACTED]
- 11. [REDACTED]
12. [REDACTED]
13. [REDACTED]
14. [REDACTED]
15. *Ellen* → *fell Alex Katsanos re policy*
- 16. [REDACTED]
17. [REDACTED]

- [REDACTED]
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20/93

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Josh Skunk - *Chronology re
Madison

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

37

373
(b)

[REDACTED]

12/23/93

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Post. [REDACTED]

-chronology

[REDACTED]

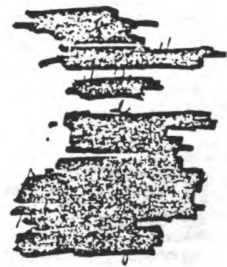
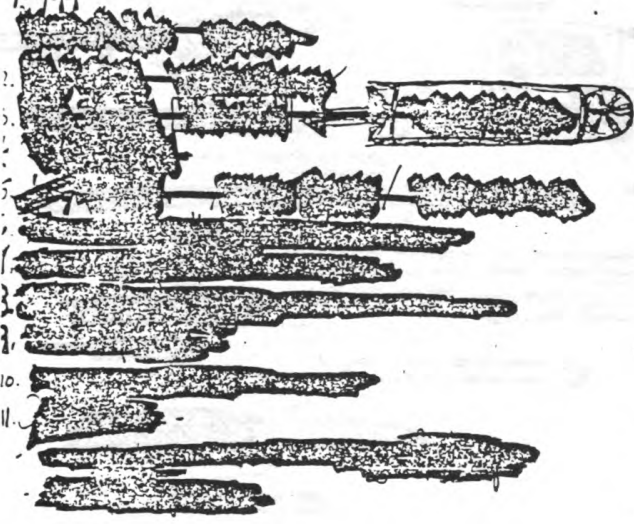
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38

374
الجز

91

1/13/94

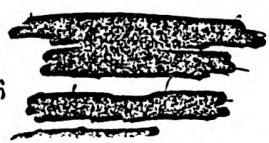


chronology



40

376



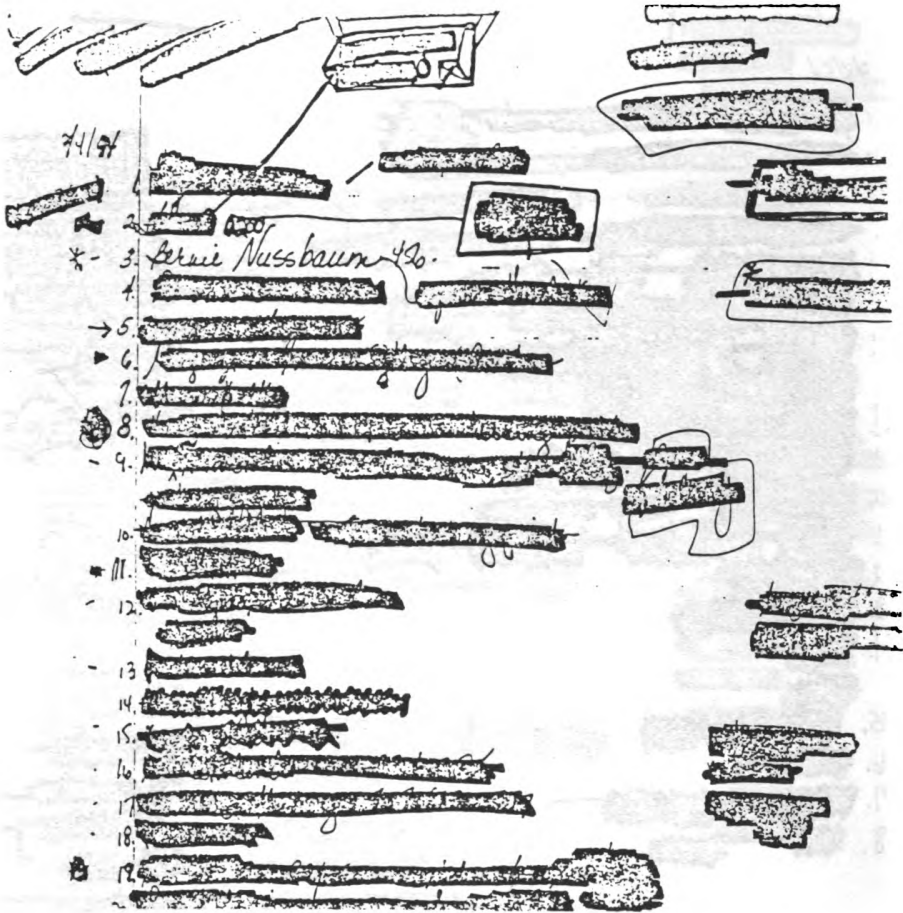
2/2/94

Bernie Nussbaum

94

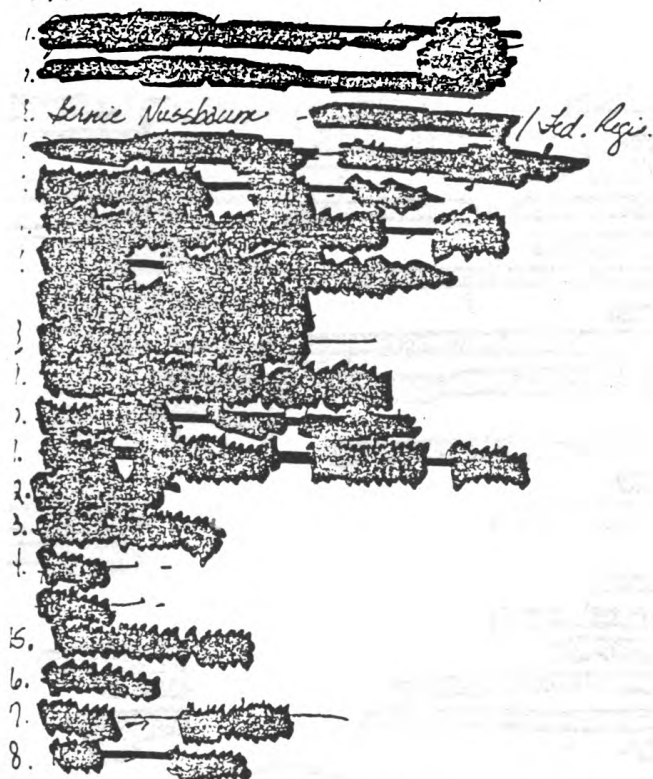
41

377



~~116-955~~

7/8/54



43

379

96

7/18/44

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. Neil Esquire 456-7901
12. [REDACTED]
13. [REDACTED]
14. [REDACTED]
15. [REDACTED]
16. [REDACTED]
17. [REDACTED]
18. [REDACTED]
19. [REDACTED]
20. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

380 [REDACTED]

44

97

[REDACTED]

[REDACTED]

2/23/94

1. [REDACTED]
2. *Bernie Nussbaum* 456-2632
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. *Neil Eggstrom*

[REDACTED]

[REDACTED]

[REDACTED]

*Josh -> Sec. P:
meeting on
neutral* }

45

381

98

2/21/94

1. Neal Eggleston
Pittsburg

2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

46

352

99

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

* [REDACTED]

[REDACTED]

Bill Hoelle - [REDACTED]
9 referrals - request after sent to Justice

→ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

47

6188

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Josh Chronology - ~~Master~~
Guenatiz



[REDACTED]



[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

Tosh
Chronology

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

49

6100

102

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]

1. [REDACTED]

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]

4. [REDACTED]
2. [REDACTED]
13. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. *Crim referrals - disclosure*
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]
12. [REDACTED]
1. [REDACTED]
2. [REDACTED]
- * 3. [REDACTED]
4. [REDACTED]

([REDACTED]

[REDACTED]

[REDACTED]

Crm referrals

- by Agent, ^{*} crm coordinator reviews
before it goes ->
Kansas City - KC office - pls
- Another ^{which} publicity / prominent officials / open
breaks off - goes to Washington

287th Day • 78 Days Left October 14, 1993 • THURSDAY 14

12:30 DINE "DCA" ACTION • APPOINTMENTS • DIARY & WORK RECORD • EXPENSES • NOTES

8
9
10
11
12
1
2
3
4
5

3:30 Brass Band
in kitchen

288th Day • 77 Days Left October 15, 1993 • FRIDAY 15

289th Day • 76 Days Left October 16, 1993 • SATURDAY 16

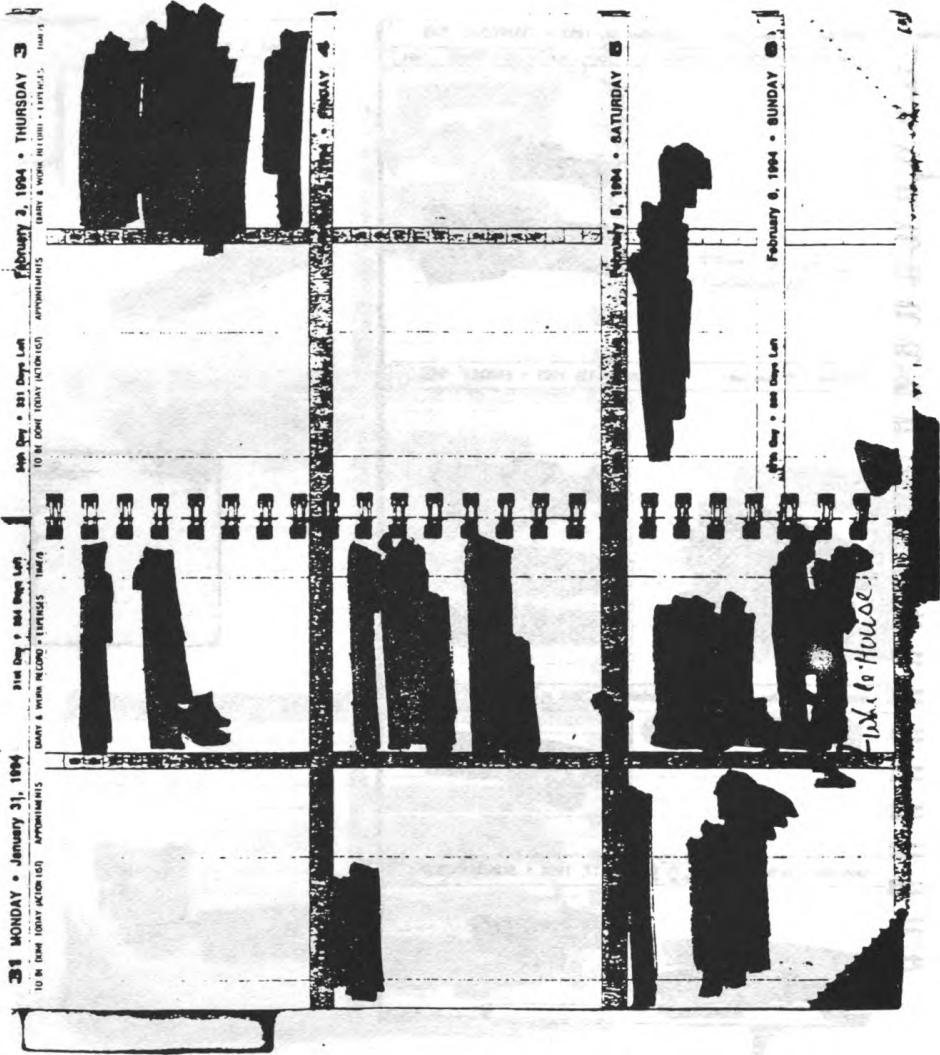
290th Day • 75 Days Left October 17, 1993 • SUNDAY 17



54

107

6265



108

55

6260



GENERAL COUNSEL

DEPARTMENT OF THE TREASURY
WASHINGTON

411

September 30, 1993

MEMORANDUM FOR ROGER C. ALTMAN
DEPUTY SECRETARY

FROM: JEAN E. HANSEN

SUBJECT: The Rose Law Firm

Steve Katsanos has talked with Sue Schmidt (See attached RTC Early Bird).

I have spoken with the Secretary and also with Bernie Nussbaum and Cliff Sloan.

I have asked Bill Roelle to keep me informed. Is there anything else you think we should be doing?

Attachment

that political influence
 Press inquiries & trying to Kabosh on
 crim referrals. Saying: not true.
 Deep background.

No influence whatever was exerted.

Institutional, administration

lawyers must have the ability

White House liaison

Improper to pass on info.

is it unusual, illegal, unethical
to disclose information about
criminal referrals?

Why did you tell Mr.
Thurbaum before the
referral was actually made?

My conversation related to
possible press inquiries.
I understood that the
criminal referrals were
on their way - they were
being handled in the
ordinary course at the
RTC. The issue was leaks
to the press out of the RTC

Why did she attend the meeting with Jack DeLoe?

The meeting was arranged by the press people to ~~to~~ discuss press inquiries. She was asked to ~~come~~ attend by the Treasury people who wanted their ~~burge~~ to ~~attend~~ present.

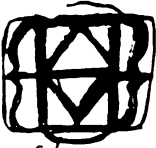
⇒ Senior institutional
administration lawyer

Invited along because
legal matter

Respond to stories about the
President

One thing I was doing was to
 visit the White House
 that there might be press
 inquiries.

I ~~assumed~~ that Roelle
 was giving me this info and
 telling me to tell Roger,
 and ~~giving me this~~
 information.



9/27

Not an EC official - have never
functioned as such. because there
has been no general counsel

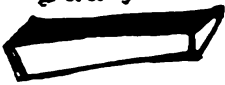
Called by Bill Poelle - He called
called me from time to
time on things that might
relate to press inquiries but
not for substantive advice.

Very first notice - knew nothing
of Madison
- Had not asked to be told

Talked to Roger - recalled names.
both recalled NY Times Article

no conflicts or
this problem

Davis -



ethics & conflicts

no problem

Very simple analysis

{ procedure
 { case

* - No briefings, no
 substantive knowledge

* - No matter before him
 from which he needed
 to consider

removing himself.

& not trying to further one's
 interest

Had consulted & asked
the question

→ Had each letter

Told Wk there was a matter
that was going to come
before him the end of
February → only a
couple of options available

Why Hanson, not Kulkarni at meeting?

GC Treasury → meeting on procedure only

Independent regulatory agency -
Didn't talk about
substance.

Appearance = Can't ^{certainly not} _{reg. matter}
 always anticipate what people will criticize

→ DAE knew about
meeting & did not
object

discuss let, affecting
7/1 agency

re: jell

get Jeanne & Dennis
extrajurisdiction on border
May '92 - May

Civil case → dismay
that anything improper re govt
lawyers getting involved

10-68

No ethical or conflict
reason not to disclose

- No executive
branch bar to
disclosure of this
type of information [etc]

Should she or shouldn't

she: people can
differ purpose -

informing WH counsel about

~~what~~ an issue that they
were going to have to deal with

69

NCT ~~for [redacted]~~ a
 seasoned politician
 background. as corp
 attorney -

→ strong background
 as corp.

→ lawyer communicating

I

00177

*Subsequent to
Revision of
February 2nd, 1994
- J. K. King, Jr.*

Outline of RTC/Madison Guaranty Issues:

o RTC has been requested by eight Republican Senators and Congressmen, including Dole and Michel, to seek tolling agreements from President and Mrs. Clinton, the McDougals, David Hale, Jim Guy Tucker, Seth Ward and the Rose law firm, relating to Madison Guaranty.

o Under the RTC Completion Act, the statute of limitations has been extended to five years. The extension is retroactive for claims involving fraud or intentional misconduct resulting in unjust enrichment or substantial loss to the institution.

o The retroactive five-year extension relating to Madison Guaranty will expire on February 28, 1994.

o The only claims that could still exist as a result of the five year retroactive extension are those relating to fraud or intentional misconduct. All other claims, including any based on negligence or gross negligence, have lapsed.

o If any claim relating to fraud or intentional misconduct does exist, the RTC has three choices: (1) allow the claim to lapse on 2/28/94; (2) commence litigation to preserve it; or (3) enter into a tolling agreement with the relevant party to extend the statute of limitations, giving the RTC additional time to investigate and determine whether to commence litigation.

o The RTC can enter into a tolling agreement only if the other party agrees.

o There must be a basis to bring a lawsuit; frivolous claims will be dismissed and can subject the attorneys bringing the suit to sanctions by the court.

o The RTC is currently reviewing the Madison Guaranty situation to determine if any claims exist under the Completion Act. (See 2/1/94 letter to Dole.)

o If it is decided that any claim does exist, the RTC will have to determine which of the three alternatives to choose.

o The work is being supervised by Ellen Kulka, the new General Counsel, and by Jack Ryan, the new interim Deputy C.E.O.

o It is not certain when the analysis will be completed, but it will be before February 28.

72


002263

125

3567

000176

**Talking points for Roger Altman: informational meeting with
Mack McLarty 2/2/94**

o RTC has been requested by eight Republican Senators and Congressmen, including Dole and Michel, to seek tolling agreements from President and Mrs. Clinton, the McDougals, David Hale, Jim Guy Tucker, Seth Ward and the Rose law firm, relating to Madison Guaranty.

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o If it is decided that any claim does exist, the RTC will have to determine which of the three alternatives to choose.

o The work is being supervised by Ellen Kulka, the new General Counsel, and by Jack Ryan, the new interim Deputy C.E.O.

o It is not certain when the analysis will be completed, but it will be before February 28.

o I have decided that I will recuse myself from the decision making process, as interim C.E.O. of the RTC, because of my relationship with the President and Mrs. Clinton.


002262

126

13

3566

DUMPFIL - (C) Copyright 1992 by Andrew M. Fried

FILE - "A:INSERTS.JEH"

.WPC2.....B.....P.....Z.....Courier 10c
 pi..#|.x.....x.....6.X.....@.....8.....;X.@.....
HP LaserJet III (Additional).onal).....HPLAIAD.PRS...x.....s
d...X.@.....2.....<.....#...L...Z...o.....
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2.....X.....F.....].....?x.x.x.....^x.
 .6.X.....@.....8.....;X.@.....\.....?x.x.x.....
x.....B.....;X.....C..
 ..4.....J.....T.....Z.....i.....#.....p.....
m.....z.....
 ..C.....

Insert 32A.....?.....<.....Q:..X.....x..Why did Ms. Hanson not interr-
 pt Mr. Altman at the February 24 Senate Hearing and remind him of the meetings
 last fall? (#.....?.....<.....A:..X.....x..I have not discussed this
 with Ms. Hanson, but knowing her as I do, I am satisfied that there was no in-
 tention of concealing any information..(#.....".....0*0*0*.....
 ".....

Insert 32B.....?
 ?.....<.....Q:..X.....x..Are you aware of any other meetings or conversations
 about Madison Guaranty with the White House? (#.....?.....<.....A:..X
x..I understand that there was a fourth meeting February 3, which Mr. Altman
 attended but Ms. Hanson did not. [The Secretary should consult with Mr. Al-
 tman on this meeting.] (Any other conversations, to the Secretary's knowledge
 ?) (#.....".....0*0*0*.....

Insert 18A...I now believe that Ms. Hanson and Mr. Altman
 consulted with me in advance of the White House meeting on February 2, 1994,
 that was the subject of Mr. Altman's February 24 Senate testimony. I had not
 previously recollected that discussion...
0*0*0*....."

Insert 32C.....?
 <.....<.....Q:..X.....x..What conversations have you had with Depu-
 ty Secretary Altman on Madison Guaranty situation? (#.....?.....<.....
 A:..X.....x..Mr. Altman and I have had several brief conversations relating to
 Madison Guaranty..(#.....?.....<.....X.....x.....X.....'.....o..X.....
 .In late September, I believe, he told me that there was a possibility that cr-
 iminal referrals might be made by the RTC that could receive press attention.
 [Correct?]?.....?.....<.....X.....x.....X.....'.....o..X.....Early
 this month he and Ms. Hanson described to me generally the process the RTC was
 undertaking in its review of Madison Guaranty in light of the then impending
 February 28th date. He also told me that he had received congressional inqui-
 ries suggesting that he recuse himself from the decision. He said that he in-
 tended to recuse himself and was going to talk with the White House..x.....
?..t.....<.....X.....x.....X.....'.....o..X.....Sometime after that, he tol-
 d me that he had decided that he would not recuse himself..x.....".....(.....
0*0*0*.....0....."

Program finished...

74

4824

J

CONFIDENTIAL

ABC News has asked Roger Altman the following questions?

- (1) Did Roger Altman put pressure on the RTC general counsel, using her to brief the outside counsel (i.e., David Kendall), on the statute of limitations?
- (2) Did the White House ask him to do it?

Altman was at a meeting at the White House that had to do with the Whitewater topic, where he was asked by a White House staff person, "Can you ask the RTC general counsel to brief the outside counsels on the statute of limitations." Roger's response was, "I don't know. I'll check." The White House person said something like, "You'd better do it quickly."

Roger then, in a regular meeting with the general counsel of the RTC, asked this question, and the response was, "Roger, I don't think it should happen now. I don't think it's the appropriate time." The signal was very clear that it was not appropriate that they should be having that conversation.

Altman's office in response to ABC has answered question (1) with "Roger Altman has regular conversations with Ellen Kulka, general counsel. This matter was discussed." They did not answer (2) and are looking for guidance from us on how to answer it.

The reporter's name is Aram Rallston. Howard Schloss is the Altman person who called her.

Jenny Terzano x62580

- What happened?

① record -

Jan Hume

~~Barbara Schiller~~

Harold

Maggie

Rene

② process - to follow between now and 2/28

③ Maggie - are you going to brief the attorney on what the process is?

④ we are not now -

→ No instruction from you

Kendall had previous before RTC

76

REDACTED

X001182

To: Ellen B. Kulka@Legal-sc@RTCCDC
 Cc:
 Bcc:
 From: Stephen J. Katsanos@Comm@RTCCDC
 Subject: ABC
 Date: Wednesday, March 9, 1994 12:14:03 EST
 Attach:
 Certify: N
 Forwarded by:

 ABC plans to run their story tonight regarding the alleged request to you fr
 Roger Altman to brief the President's private lawyers on Madison related
 matters. I mentioned to you earlier that the reporter on this claims that A
 has spoken with Altman on this on a "background" basis and claims to have be
 told by Roger that you could "clear up any misunderstanding" about what he
 intended regarding this alleged request. ABC now claims that they have this
 request confirmed by another source and will run with the story tonight. The
 would like to interview you on this. However, absent agreement to an
 interview, they will say that you, through a spokesman, said that Altman, the
 CEO, is your client and as such any conversations are protected by attorney
 client privilege. I told them I would prefer they not use that phrasing and
 suggested instead that they say you believe as general counsel you feel any
 conversations you may have with RTC officials relate to the RTC's business an
 would be inappropriate for you to discuss with the press. They prefer the
 attorney/client privilege soundbite.

If you would like to talk with them, now is the time. Arim Rosten is at
 887-7300. I would like to know if you call. If you want me to try for
 another response, let me know. I have suggested, as I have in the past, that
 if they believe such a conversation took place, the person to talk to to
 properly understand intent is the one who allegedly made the request, Roger
 Altman.

78

001339

K

completed after I've left. ..Third, I might point out that the RTC referred this matter to the Justice Department for possible criminal review last October.

I was also interim CEO at that time...I was advised at that time that such review was being conducted and that a decision on referral to Justice would be made. As certain Treasury and RTC officers will attest, I took the position that normal, arms length procedures should be followed. If such a decision on referral was typically made at the regional office level, my view was that it should be made that way in this matter.....".....0*0*0*.....7.....

.....Y.....V..F.....#X.W.....P.....7.

..[AX.2#...What Conversations Have You Had with the White House on this Matter: proximately three weeks ago, Jean Hanson.(Treasury General Counsel) and I requested a meeting with Mr. Nussbaum, White House Counsel. At that time, the statute of limitations on matters like this was set to expire on February 28...We advised Mr. Nussbaum that the RTC would be reaching a decision on this matter before that date. That there were only two decisions which could be reached:

(1) finding that there existed a basis for a civil claim which lead either to a tolling agreement between the RTC and the parties at interest or to the RTC's filing a claim in court. Alternatively, the RTC could conclude that there was not sufficient basis for a claim and permit the statute of limitations to lapse...We made clear that we had no idea at all what decision would be reached. I did say, however, that if I received a clear recommendation from the RTC's chief legal officer, I would follow it. I also said that I was reserving judgement on a recusal. ..We were only asked one question. Did we intend to provide the same briefing on the RTC's processes to attorneys for the parties at interest. I said that I assumed so but would check with the RTC General Counsel...Jean Hanson did check and was told "in due course" "I said fine"....".....0*0*0*.....Y.....Why did you brief the White House on those processes?.....Y.....We wanted them to know that we would handle this on a strictly professional arms length basis. Just like the October decision on referring the Madison matter to Justice.....Y.....Why did you judge it wise to brief them?...It was intended as a warning to the effect that anything could happen.....Y.....Who else attended that meeting?.....Mr. Ickes, Ms. Williams and Mrs. Nussbaum's deputy.....Y.y.....A.....Were there any other conversations at all.....The only other discussion .. which lasted about five minutes .. occurred later when indicated that I was not inclined towards a recusal.....V..F.....

Program finished...

80

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FILE - "A:JGT"

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'.....h.....p.....x... (#..%.'0*.....81.3.5@8...<H?.A.....
.....K.....DRAFT CHRONOLOGY.....?.....<.....X
.....x..In late September, I believe, he told me that there was a possibility
that criminal referrals might be made by the RTC that could receive press atte
ntion..f!.....?.....?.....X.....x..In October I was told of pre
ss inquiries..f!.....?.....?.....X.....x..Early this month he de
scribed to me generally the process the RTC was undertaking in its .....0...
.revei.....0.....review.....0.....0.....w.... of Madison.Guara
nty in light of the impending February 28th date. he also told me that he had
received congressional inquiries suggesting that he recuse himself from the d
ecision. he said that he was reserving judgement on the recusal..f!.....
...?.....<.....X.....x..Sometime after that, he told me that he had deci
ded .....1...tah.....1.....that.....1.....1.....t.....he wo
uld not recuse himself..f!.....?..0.....<.....X.....x..In January o
r February, I was advised by Christine.Varney that I would not be invited to a
discussion of Whitewater matters because of my Chairmanship of the RTC.Oversig
ht Board..f!....

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Program finished...

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FILE - "A:JGT"

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(TT).....?..x..x..x.....^X..x...6..X.....@...D.Q...X..@.....
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.....@.....4.....(X..@.....2.....@.....P.....
.....#|..x.....r.....X.....'.....h.....p.....x...
#..%.'0*.....81.3.5@8...<H?.A.....X.....
'.....h.....p.....x... (#..%.'0*.....81.3.5@8...<H?.A.....
.....K.....DRAFT CHRONOLOGY.....?.....<.....X
.....x..In late September, I believe, he told me that there was a possibility
that criminal referrals might be made by the RTC that could receive press atte
ntion..f!.....?.....?.....X.....x..In October I was told of pre
ss inquiries..f!.....?.....?.....X.....x..Early this month he de
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.revei.....0.....review.....0.....0.....w.... of Madison.Guara
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...?.....<.....X.....x..Sometime after that, he told me that he had deci
ded .....1...tah.....1.....that.....1.....1.....t.....he wo
uld not recuse himself..f!.....?..0.....<.....X.....x..In January o
r February, I was advised by Christine.Varney that I would not be invited to a
discussion of Whitewater matters because of my Chairmanship of the RTC.Oversig
ht Board..f!....

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Program finished...

81

134

4570

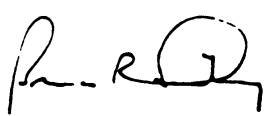


X001179

Personal and Confidential

MEMORANDUM

To: File

From: Bruce R. Lindsey 

Date: October 20, 1993

Re: Whitewater Development Corporation

On Thursday, October 14, 1993, Bernie Nussbaum, Neil Eggleston, and Cliff Sloan of the White House Counsel's office, Mark Gearan and I met with Jack DeVore, Josh Steiner, and Jean Hanson of the Treasury Department. The purpose of the meeting was to discuss a telephone call that Jack had received the day before from Jeff Gerth of *The New York Times*.

Gerth informed DeVore that he is aware that a number of criminal referrals involving Jim McDougal and Madison Guaranty had been forwarded from RTC's Kansas City field office to its Washington office. (Apparently, the "normal" procedure is for a criminal referral to be sent from a field office directly to the appropriate U.S. Attorney's office. DeVore did not know why these referrals came to Washington instead.) Gerth stated that, to his knowledge, President Clinton was not a target of the referrals, although Governor Jim Guy Tucker might be.

One of the referrals, however, involved four cashiers checks -- each for \$3,000, two made payable to the Clinton for Governor Campaign and two made payable to Bill Clinton. The checks were dated April 4 or 5, 1985. All four checks were deposited in the Bank of Cherry Valley. Gerth wanted DeVore to find out who had endorsed the checks. (A check of our campaign records turned up three cashiers checks for \$3,000 each from J. W. Fulbright, Ken Peacock, and Dean Landrum, and a personal check for \$3,000 from Jim McDougal, signed by Susan McDougal.)

X001180

DeVore confirmed with the RTC that the referrals had been received in the Washington office, but had already been forwarded on to the Little Rock U.S. Attorney's office. DeVore wanted to make it clear to Gerth that the referrals had been sent to Little Rock before his call. DeVore's inclination was also to confirm to Gerth the fact of the referrals. He indicated that such confirmation was normal procedure. We suggested that instead of confirming the referrals, DeVore should indicate "off the record" that whatever had been received in Washington had been forwarded to the U.S. Attorney's office prior to Gerth's call.

The RTC believes that the funds for the cashiers checks came from a loan from Madison Guaranty to a Republican, but supposedly the Republican was unaware that some of the loan funds had been diverted.

cc: Maggie Williams
Bill Kennedy
Mark Gearan

M

3-4-84

X000878

+ 2 FBI agents served them

- Counsel's ofc. FBI called Kennedy. Kennedy notified st.
- Gathered in counsel's ofc - served shortly after 7 p.m.
- Add'l subpoena served on Exec ofc of Pres to protect records & documents
- Returnable Mond 10 @ 10 am. Special Counsel's ofc + ~~with~~ contacted to work out details.
- Staffers notified this afternoon
- Mack notified Pres arrived 6 p; he ^{ordered} staff to ensure all papers taken;
- Anyone else? We're checking, and if we find ~~any other~~ ^{other} people there were other contacts, notify special con.
- Nothing to hide; cooperate fully
- Defense? Up to each person.
- Can it be pro bono?
- First Lady? Assume so, but not sure.
- President? Has ~~called for~~ welcomed full investigation.
Wants staff to cooperate fully.
- Expect it? ~~with~~ Not unexpected.
- Welcome this. Full investigation & we plan to cooperate fully.

[Lisa Caputo, Maggie Williams
Harold Ickes, Bruce Lindsey, Mark Gearan, Bernard H

86

1

X000879

RTC Tic-Toc:

* The White House first learned about the meetings with Bernie Nussbaum and members of the Treasury Department staff members on Tuesday from inquiries from the Washington Post. [When did the President first learn of them? Did Mack tell him? If not who?]

* Tuesday or Wednesday morning Mack spoke to the President about lingering questions concerning the meeting with Roger Altman and White House officials [and also about Washington Post inquiries about the two Nussbaum meetings.]?

* The President and Mack talked about the questions related to this issue at which point the President made it very clear that he wanted the White House staff to avoid even the appearance of impropriety.

* The President then directed Mack to clarify the rules on Executive Branch contact with other government agencies and departments. Mack decided to write this in memo form for the entire White House staff.

* At the Senior Staff meeting on [Wednesday/Thursday morning] Mack made it clear that White House officials must be careful to avoid even the appearance of impropriety in dealing with independent agencies looking into the Madison Guaranty/ Whitewater matter.

* Mack then began to look at and define the rules and guidelines for White House contact with independent government agencies and answer questions raised by the Washington Post.

* Mark Gearan became the point person for the Washington Post story. He worked with members of the White House counsel's office to draft the necessary responses. [He did not talk to Treasury Officials relating to the Washington Post inquiry].

81

X000800

RTC Talking Points

- * "Nothing inappropriate happened at either of these meetings."
- * "In retrospect these meetings should never have happened."
- * "October 1993 none of this was an issue- We did not know at the time of these meetings what we know now."
- * "Mack circulated a memo laying out strict guidelines for White House contact with independent agencies and this will demonstrate that this White House will bend over backwards to avoid even the appearance of impropriety."

Nussbaum Meetings Tie-Toc

- * On September 29, 1993 there was a briefing in the office of Bernard Nussbaum. At the meeting were, from the White House, Nussbaum, Neel Eggeston, and Cliff Sloan, and from Treasury Jean Hanson, Josh Steiner, Ron Noble, and Jack DeVore. The meeting was a briefing about the Treasury Department report on Waco that was to be released the following day.
- * Jean Hanson stayed behind after the meeting was over and told Nussbaum that the RTC [had or was going to refer the Madison Case to the DOJ??] Nussbaum called Cliff into his office and Jean repeated her conversation to him. Cliff remembers that Hanson told him ~~that there were several matters referring to the Clinton's~~ including the 1984 Clinton Gubernatorial campaign but they were not targets.
- * [Cliff and Bernie telephoned Bruce Lindsey and informed him about their conversations with Jean. They told no one else. Bruce did not tell the President or First Lady.]
- * Hanson then called Neel and Cliff over the next two weeks--from September 29 to October 14--to discuss press inquiries into this matter. Specifically, a reporter came to an RTC investigator's house to talk about Vince Foster and Seth Ward.
- * Neel and Cliff did not advise her to do anything. They reported the calls to

88

X000881

Bruce and Nussbaum.

* The meeting on October 14th was set up by Mark Gearan and included Nussbaum, Neel Eggleston, and Cliff Sloan and from Treasury Jean Hanson, Josh Steiner, and Jack DeVore.

89

142

X000882

RTC Tie-Toc:

* The White House first learned about the meetings with Bernie Nussbaum and members of the staff of the Department of Treasury on Tuesday from inquirers from the Washington Post. (When did the President first learn of them? Did Mack tell him? If not who?)

* Tuesday ^{Night} or Wednesday morning Mack spoke to the President about lingering questions concerning the meeting with Roger Altman and White House officials [and also about Washington Post inquiries about the two Nussbaum meetings.] >

* The President and Mack talked about the questions related to this issue at which point the President made it very clear that he wanted the White House staff to avoid even the appearance of impropriety. ^{When} _{me} _x

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* Mark Gearan become the point person for the Washington Post story. He worked with members of the White House counsel's office to draft the necessary responses. [He did not talk to Treasury Officials relating to the Washington Post inquiry]. ^{and others [Bruce L.]}

~~Howard Schloss Treas press etc~~
called late wed pm

RTC Talking Points:

* ~~"Nothing inappropriate happened at either of these meetings."~~

90

143

X000883

- * "In retrospect these meetings should never have happened."
- * "October 1993 none of this was an issue- We did not know at the time of these meetings what we know now."
- * "Mack circulated a memo laying out strict guidelines for White House contact with Independent agencies and this will demonstrate that this White House will bend over backwards to avoid even the appearance of impropriety."

Nussbaum Meetings Tic-Toc

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- * [Cliff and Bernie telephone Bruce Lindsey and informed him about their conversations with Jean. They told know one else. Bruce did not tell the President of First Lady.]
- * Hanson then called Neel and Cliff over the next two weeks--from September 29 to October 14--to discuss press inquires. Specifically, a reporter came to an RTC investigators house to talk about Vince Foster and Seth Ward.
- * Neel and Cliff did not advise her to do anything. They reported calls to Bruce and Nussbaum.
- * The meeting on October 14th was set up by Mark Gearan and included Nussbaum, Neel Eggleston, and Cliff Sloan and from Treasury Jean Hanson, Josh Stiener, and Jack DeVore.

91

144

WH11

3/3/94

X000884

Bernie

- mtg w/ Jean Hanson 9/29 (?)
- told Bruce Lindsey that RTC was about to refer Madison case [probably assumed to DOJ]

- Bruce Lindsey — did not do anything w/ info from ~~Chiff~~ Bernie via Chiff.
- When we were reviewing Roger's testimony, Roger said he came to discuss RTC.
 - RA said he had one substantive contact w/ WH. Jean Hanson + RA requested mtg w/ Bernie to discuss procedure w/ ref. to 2/28 deadline ... explained process RTC would follow. "That was whole conversation." RA said he was asked one question ...
 - WH officials later recalled that Roger had raised issue of whether he should recuse. WH officials ~~did~~ say they advised him to look at the legal ethical obligations + make decision. (subtext: If there is no legal obligation, don't [!])

X000985

- John, Neil, Cliff, etc met to review Roger's testimony & make sure we're ~~over~~ accurate.
- ~~See~~ John P. Then talked to Roger, told him that he had misspoken - could be misleading

assumed there was a way to correct record... wrote letter, & decided to leave it up to him how to do it

X000886

In retrospect, the meeting probably
shouldn't have occurred. But
at the time,

Cliff

9/29 — ? Treas. / Waco report
Wed. night before

Bernie got info, briefed Bruce L.
Cliff talked to him later ... ?

Bruce doesn't remember talking
to Bernie; Cliff ~~can~~ come by
a few days later.

* Presented as a fait accompli

Jean + Bernie. Then Cliff pulled in.
Treas. briefing in Bernie's office
Ron Nold, Dave, Steiner, etc.

94
— ~~5 min~~ A few minutes - less than 5
one or two? Can't remember

X000887

Cliff - remember 8-9 matters.
 Clinton's mentioned; weren't
 The subject or targets. Mentioned
 something about 1984 Campaign

Phone calls - often initial
 conversations. She called Neel/Cliff.
 Relating press inquiries. Reporter
 had shown up @ RTZ investigator's
 house & was asking about Vince,
 Seth Ward.

In the phone calls... said she had
 been wrong about Altman sending
 over materials. Suggested & looking
 at 1992 & Benth article.

Didn't advise her to do anything.
 Reported calls to Bruce & Bernie.

→ [Lindsey wrote memo to the
 file about it 10/14 mtg]

Neel, Cliff, Jean, Jack, Josh
 Mark, Bernie.

→ set up thru Mark.

Possible Questions on Status of S&L Probe
March 3, 1994

X000888

1. Did the information Jean Hanson give to Bernie Nussbaum help the White House to formulate a strategy for the ongoing Whitewater investigation?
2. Other than the meetings reported, have there been any other meetings with White House officials, Treasury officials and RTC officials on this matter?
3. When did the President know about the Hanson/Nussbaum encounter?
4. When did the President know about the late October meeting with Nussbaum, Gearan, Treasury officials, and Hanson?
5. When did the First Lady know about the meetings?
6. Who asked for the second meeting?
7. Did participants in the second meeting disseminate the information to the President? First Lady?
10. Does the President think this matter should be referred to the special counsel?
11. Does the White House communications office talk regularly with Treasury public affairs about the ongoing investigation?
12. Roger Altman said last week he showed "bad judgement" in conducting the briefing with Hanson. Does the White House think they showed bad judgement in meeting with Hanson and Treasury officials about the ongoing investigation?
13. Does the White House think Treasury or White House officials should comply with Senator D'Amato's request for a special hearing by the Banking Committee?
14. What does McLarty's memo say? When will it be released to staff? What staff is affected by the memo?
15. Was the Hanson/Nussbaum meeting inappropriate? Was the Hanson, DeVore, Gearan, et al, meeting inappropriate? Does the White House think the Roger Altman meeting was inappropriate? If not, then why is McLarty sending a memo that says contacts between Treasury and White House officials be stopped?
16. Does the president still have confidence in Bernie Nussbaum counsel?
17. Who is researching the rules? What have you found out about the rules?

9/30

- Alman's file
- NYT - 3/9/82

X000983

- Price News

- BIU Rules - ETC

- UP 1 KC RTC Office - Office which finds
9 referrals - phone - Sue Schindler - W.K.
vital info suppressed - 4 months ago
specifically -

- denied unless told #1's for R.E.
Investigators

- 9 cr. referrals

- believed - Crim referrals to D.C.

- apparently - K.C. to D.C. -

- D.C. to L.A. Friday -

- Crim referral since last September -

- referral last September - Whitewater Co. -
K.C. Clinton, p.m. report

- 9 referral - allegations re: Fulbright -
S. B. T. Tucker
• attempt to deny facts

- most allegations - compare to dinner facts -

97

9 new referrals

X000994

- conspiracy to divert funds for agency of Clinton -

• Mackay

• Pearson

• Clinton '85 campaign as co-corp. rents

Clinton wanted in other charge as pot. v. time



1017

X00099

stomach patterns
 - Sue Schmidt - was out in l.c. - Considered 1 unit
 at home - asked gis - "hickory"

- Jeff Gentry working on it

(1) ^{Whiteaker} Develop - interest for Kelly - Fu?
 : 1015 - SP total prob 7 part 3

(2) Seth Ward = better father - in law?

(3) how 3 senior parties in house for the at
 TOE - because he ~~was~~ made now 888?

(4) Vince Foster involved in this?

→ interviewed Jim McDougal 1 day before

X000986

Steve Conrad taken public
Sue Schmidt - ~~St~~ p.r. person -- RTC office

RTC Early Bond - Wash. Post & AP

pursing these firms is undisclosed

like when left: false

- The these law firms alleged undisclosed
Conflict of interest, and, what RTC
Sources suggest that Mulholland
refers to the Justice Dept, like
the firms - who

NO CONTEMPT

X000.11

October 7, 1993

MEMORANDUM FOR BRUCE LINDSEY

FROM: CLIFF SLOAN

With regard to the subject that Neil Eggleston and I spoke to you about one night last week, we have some additional information that we'd like to give you in a brief update. Let us know any convenient time for you today or tomorrow. It shouldn't take more than a few minutes.

N

X001175

THE WHITE HOUSE

WASHINGTON

Account of Religion

- Sam. Schmidt / 10.11.19 - 2. ed

- asked for RTC in meeting no
interruptions =

- RTC "Early and - promising"

Res. Dr. J. L. ...

undoubtedly - and ITC

சென்னை - 600 008

2. The ...

and discuss the solution.

2. 25

X001176

9 reports - all at 100

164 - down - 1/2 of 100

Sweden Fullbright - 1985

McDonnell - 1985

1985 Clinton Committee

X001177

EXTRACTED

THE WHITE HOUSE

AP reporter named Kyle
Chico de pointed in
Bank of Cherry Valley
Maurice Smith

US Att, → PC → other
 cashier's check → for
 McDougall / Susan McDougall
\$300,000

Current Governor - may
well be indicted

X001178

→ RTC →

Gene Lewis - { Chief insured job -
RTC
Kansas City

2-1 field office → U.S. Atty -
normal procedure

2-3 field office → RTC Washington
last week → sent to
US Atty

Sue
~~Schmidt~~

ANDISON GUARANTY

1985 - Rose Row for

~~Bill Gerlach~~

~~Bill Gerlach~~

called Jack yesterday

check - \$12,000

2 payable to BC

2 payable to client -

- April 4/5, 1985 -

- Each check for \$3,000

repayment of company

debt - who endorsed ???



X001043

MCICLIFFORD SLOAN
Acct 301 907 0964 917 06

Feb 2 1994

Amount	Place	Number	Date	Time	Rate	Min	
Charges for 301 907 0964 MCI 20363440							
15	F BALT MOR MD	410 433-0148	Dec 22	3:25P	10	1	
10	F BALT MOR MD	410 433-0148	22	3:55P	15	3	
28	WINNETKA	708 446-7083	23	3:54P	15	6	
14	WINNETKA	708 446-7083	23	3:10P	15	1	
27	F BALT MOR MD	410 433-0148	23	3:40P	15	2	
14	WINNETKA	708 446-7083	23	10:43P	15	1	
91	WINNETKA	708 446-7083	27	3:05P	10	4	
14	CARNED E PA	412 279-5683	28	3:08P	15	1	
14	CARNED E PA	412 279-5683	28	3:09P	15	1	
22	WILSONHEAD SC	803 785-1034	30	10:35P	10	1	
49	SACRAMENTO CA	916 643-6453	30	1:55P	10	2	
24	SACRAMENTO CA	916 452-2130	30	2:10P	10	1	
24	SACRAMENTO CA	916 643-6453	30	2:52P	10	1	
2	49	SACRAMENTO CA	916 452-2130	30	2:52P	10	10
15	F BALT MOR MD	410 433-0148	31	10:05P	15	1	

Page 8

803-755-1234 ext. 7472 X00057



Document was
submitted for a
reason —
What is the
connection?

X000979

REDACTED
(rest of notebook)

P

273

X000137

TELEPHONE CALLS

JOHN D. PODESTA

Date

2-15

TIME	NAME	MESSAGE	TELEPHONE NO.
6:45 ✓	Mr. Lee		622 1900
		112	
		165	

REDACTED

X000188

TELEPHONE CALLS

JOHN D. PODESTA

Date Feb. 16

TIME	NAME	MESSAGE	TELEPHONE NO.
10:10	✓ Michael Levy		622 1900
11:15	✓ Michael Levy	✓	622- 1900

REDACTED

X000189

TELEPHONE CALLS

JOHN D. POBESTA

Date

Feb. 17

TIME	NAME	MESSAGE	TELEPHONE No.
1:35	Mike Leary		622 1900
	John H. H.	775-7981	
		114	

REDACTED
TELEPHONE CALLS

X000190

JOHN D. PODESTA

Date Feb. 18, 1994

TIME

NAME

MESSAGE

2

2:21

Mr. Levy

As call back

622-1400

X000191

TELEPHONE CALLS

JOHN D. PODESTA

Date

2-22

TIME	NAME	MESSAGE	TELEPHONE NO.
7:30	Michael Levy		66 622190
	:	116	
	169		

X000192

REDACTED

TELEPHONE CALLS

JOHN D. PODESTA

Date

2 23

TIME	NAME	MESSAGE	TELEPHONE NO.
6:05	PODESTA Spencer	ccB	

REDACTED

X000194

TELEPHONE CALLS

JOHN D. PODESTA

Date

2-23

TIME	NAME	MESSAGE	TELEPHONE NO.
7:35 ✓	Ksh. ✓ Steiner		6-2 0016

REDACTED
TELEPHONE MESSAGES

X30 1195

John D. Podesta

Date: 2-24

TIME	NAME	MESSAGE	PHONE
------	------	---------	-------

6:51 am	XSH Steuer		622- 0016
------------	---------------	--	--------------

REDACTED 2128? X000176
TELEPHONE MESSAGES

John D. Podesta

Date: _____

TIME	NAME	MESSAGE	PHONE #
------	------	---------	---------

✓	JOSE STINEE		622-00
---	-------------	--	--------

DICTATED

X000186

TELEPHONE CALLS

JOHN D. PODESTA

Date

Mar 1 1964

TIME	NAME	MESSAGE	TELEPHONE #
1:45	Josh Steiner		622 0016

102

ethical
Dennis
Powers

REDACTED

X000185

TELEPHONE CALLS

JOHN D. PODESTA

Date

3/1

TIME	NAME	MESSAGE	TELEPHONE
	✓		
5:39	✓ Roger Altman	RYC	622 107
6:20	✓ Josh Steele		622- 00
		123	

285

REDACTED

XGCC184

TELEPHONE CALLS

JOHN D. PODESTA

Date

3-1

TIME	NAME	MESSAGE	TELEPHONE NO.
------	------	---------	---------------

7.39	✓	Josh Steiner
------	---	-----------------

622 0016

REDACTED

X000183

TELEPHONE CALLS

JOHN D. PODESTA

Date Mar 2

TIME	NAME	MESSAGE	TELEPHONE NO
12:30	Josh Steiner		622 0016

REDACTED

X700182

TELEPHONE CALLS

JOHN D. PODESTA

Date Mar 4

TIME	NAME	MESSAGE	TELEPHONE NO.
------	------	---------	---------------

A large, bold, handwritten capital letter 'Q' in black ink. The letter is slightly tilted to the right and has a thick, textured appearance, suggesting it was written with a marker or thick pen. The tail of the letter curves downwards and to the right.

THE DEPUTY SECRETARY OF THE TREASURY
WASHINGTON

RTC *Yat*
Lu

X001349

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE. If the reader of this message is not the intended recipient or an employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us by mail. Thank you.

FAX COVER SHEET

Date : MARCH 24 1993
To : BERNIE NUSSBAUM
Fax # : 456-6279
From : Roger C. Altman
Number of pages - including this cover page 3
Message :

Please call 202/ 622-0402 if you do not receive all pages

Mr. Altman's private fax number is : 202/ 622-0404

RTC North Central Region CLIP SHEET

X001350

Monday, March 9, 1992

Selected News Articles

Public Affairs

CLINTON DEFENDS REAL-ESTATE DEAL

Says He Lost at Least \$25,000
and Did Nothing Improper

By GWEN IFFILL

Special to The New York Times

AUSTIN, Tex., March 8 — Gov. Bill Clinton of Arkansas said today that he and his wife, Hillary, did nothing improper when they entered a real-estate partnership with the owner of a savings and loan institution that was subject to state regulation.

Speaking to reporters as he campaigned through Texas today for votes in the Democratic Presidential primary on Tuesday, Mr. Clinton said that an article about the partnership in The New York Times on Sunday was misleading and that he and his wife lost more than \$25,000 in the joint venture.

"There was no impropriety," Mr. Clinton said of the partnership with his former aide James B. McDougal to develop land in the Ozarks.

Financial Exposure

The partnership began in 1978, when Mr. Clinton was Arkansas's Attorney General. "I was not yet Governor," he said today, and Mr. McDougal "was not in any financial institution."

"The article seems to imply that my wife and I had no financial exposure," he went on. "There's nothing could be further from the truth."

"We were jointly and severally liable for more than \$200,000 worth of debt," Mr. Clinton said. He termed the relationship "purely private investment" that was "nothing but a big money loser for me."

The Times article raised questions about the Clintons' relationship with Mr. McDougal and Whitewater Development, a corporation that planned to turn the 200 acres of Ozarks property into lots for vacation homes.

Records obtained by The New York Times were incomplete, but the article questioned the Clintons' involvement in the venture at a time when Mr. McDougal's savings institution, Madison Guaranty, was subject to regulation by the state securities commission.

The article also said that on their tax returns in 1984 and 1988 the Clintons improperly deducted at least \$6,000 in interest payments on bank loan payments that Whitewater made for them.

THE NEW YORK TIMES
March 9, 1992

Lawyers Agree To Pay Big Fine In S. & L. Ca.

By STEPHEN LABATON

Special to The New York Times

WASHINGTON, March 8 — A leading New York law firm today agreed to pay \$41 million to settle Government accusations that it had withheld damaging information about its client, a large savings association whose failure has epitomized the crisis in the industry's disaster.

Shortly before settling the \$273 million lawsuit that the Government filed six days ago, lawyers at the firm, Scholer, Fierman, Hays & Handler, stood again that they did nothing improper in representing Charles Keating Jr. and his Lincoln Savings and Loan Association of Irvine, Calif. They were forced to admit, they said, that the Government's move to seize the firm's assets, which put the company perilously close to collapse.

The Government said this evening that the settlement would "assure the firm's activities that gave rise to the case are never again repeated."

The quick settlement, in which Scholer neither admits nor denies the Government's accusations, is expected to have a profound impact on a lawsuit the Government is preparing to file in the next few weeks against lawyers, accountants and savings executives from scores of banks seized in March 1989. The state limitations on those cases runs a month.

"It is unlikely that it is the law we will use such an order process," said Harris Weinstein, counsel to the Office of Thrift Supervision, the agency that regulates the savings industry and that filed the suit along with the Justice Department. Freezing assets is a tactic Government has traditionally used.

Continued on Page C5, Col. 1

129

his wife were reviewing their tax records and would repay the amount, which his lawyer, Susan P. Thorburn, described as an "honest error."

Before the Times article was published, the Clintons turned down requests for interviews, instead retaining lawyers to answer questions about the enterprise. The lawyers were interviewed for several hours in person and several hours by telephone and provided 13 to 20 documents.

In an interview at The Arkansas Democrat Gazette today, Mr. McDougal was quoted as saying that the Clintons did nothing improper and that neither he nor his savings and loan got preferential treatment from state regulators.

In a separate statement at Mr. Clinton's news conference today, Sen.

Rever, Mr. McDougal's lawyer, said he was "appalled and affronted by the allegations and reckless disregard of the facts by The New York Times and its reporter, Jeff Gerth."

He said that any suggestion that Mr. McDougal used money from Madison Guaranty to subsidize the Clintons' portion of the joint partnership "is not only false but probably actionable by Mr. McDougal."

Mr. Rever said in the statement that there was "no link between Whitewater Development Company and Madison Guaranty Savings and Loan."

The Times article cited records showing that in 1984, when Whitewater's account at Madison was overdrawn, money was deposited to make

up the shortage from Madison Market-ing, an affiliate of the savings and loan that derived its revenue from the institution.

The article also called attention to Mr. Clinton's appointment of Beverly Bassem Schaffer, a lawyer in a firm that had represented Madison Guaranty, as State Securities Commissioner at a time when the institution faced possible closure by the state.

Today Mr. Clinton said his appointing Mrs. Schaffer was not a way of aiding Mr. McDougal. "I had no contact with her whatsoever on this and neither did my wife have any contact," the candidate said.

Mrs. Schaffer, in a statement also released by the campaign, concurred.

came to light in an effort to get the law passed. The New York Times (Times of the Glorious) say it records and breaks relationships. It takes questions of whether a government should be involved in a business deal with the owner of a business explained by the state and whether, having been, one government was through by June 1980. The Times said for legal fees for work done for the business.

Asked about these matters, the Clintons removed two lawyers to answer questions about it. Whitewater and Mr. McDaniel. The lawyers said the former property acquisitions were held for

The two lawyers representing the Christys, *Mr. Samuel P. Thomas*, a longtime friend, and *Lucretia Lynch*, a campaign aide, who participated in several hours of interviews at Mrs. Thomas's Washington offices Thursday and Friday.

1

The crew that are available, and Mrs. Timmer's account, show that Whitewater made payments between 1987 and 1993 on Mrs. Clinton's \$20,000 oval estate job, reducing the debt by almost \$16,000 while also paying at least

Longtime Friendship

Mr. Clinton and Mr. McDougal were friends since the 1960's. They learned the ways of Arkansas politics together, and both were active in Democratic political circles as youths. Both worked for Arkansas Senator J. William Fulbright in their 20's.

At 21, Mr. Clinton became the son-in-law's youngest governor, and he brought the McDougal into his administration as his aide for economic de-

Mr. McDougal had no ill feelings about the experience at all. In fact, he said, he learned a great deal from it. He said that he was glad to have been able to help Mr. Clinton in his search for a job. He said that he was glad to have been able to help Mr. Clinton in his search for a job. He said that he was glad to have been able to help Mr. Clinton in his search for a job.

books as a Whitehall corporate at
and used as a model house to sell
other buyers, according to Whitley.
records produced by Ms. Thomas
because the records are incomplete,
is unclear exactly what happened,
it is clear that Mrs. Clinton purchased
borrowed \$50 from Mr. McDonough
and home at about one-third the
price, to pay for the house and the
Mrs. Thomas told Mrs. Clinton
the comparison regarded this as a
private debt, not a Clinton debt, the
was in Mrs. Clinton's name.

State Venture

The corporation included as one but the Mrs. C. and the MacDougal. It was this Clinton 664, Mrs. Whitewater made payments on until the end of 1931.

One year after acquiring the property, Mrs. Clinton sold for \$27,500 in a sale where payments were to be made over time, records show. It is not clear who received the buyer's down payment of \$3,000. Mrs. Clinton or the corporation. But Mrs. Thompson said it was the corporation that took the loss on its books. A few years later, the buyer went bankrupt and stopped making payments, and then he died.

In 1933 Mrs. Clinton bought back the house from the title of the original buyer. Records show that she paid \$1,000 and then resold the property a short time later for about \$21,000, after clearing costs. The Clinton's reported a capital gain on their taxes that year of \$1,400.

Mrs. Thompson explained that the capital gain was small because, as part of the transaction, Mrs. Clinton had to pay off Whitewater's remaining \$12,000 debt on the property originally incurred by her. Clinton. The payments the previous owner had been making to Whitewater before he died went to help pay off that debt.

Accounts Overdrawn
It was during the period when Whitewater was making the Clinton's payments that Pauline Gurnan, a fair employee, Whitewater's check book, shows that Whitewater's account at Madison was overdrawn in 1934, when the corporation was making payments on the Clinton's loan. Money from Madison Merchants was deposited to help make up the shortage.

X001346

TO: BERNIE NUSSBAUM

FR: ROGER ALTMAN

(2 pages follow)

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RTC North Central Region CLIP SHEET

X001347

Monday, March 9, 1992

Selected News Articles

Public Affairs

CLINTON DEFENDS REAL-ESTATE DEAL

Says He Lost at Least \$25,000
and Did Nothing Improper

By GWEN IPILL

Special to The New York Times

AUSTIN, Tex., March 8 — Gov. Bill Clinton of Arkansas said today that he and his wife, Hillary, did nothing improper when they entered a real-estate partnership with the owner of a savings and loan institution that was subject to state regulation.

Speaking to reporters as he campaigned through Texas today for votes in the Democratic Presidential primary on Tuesday, Mr. Clinton said that an article about the partnership in The New York Times on Sunday was misleading and that he and his wife lost more than \$25,000 in the joint venture.

"There was no impropriety," Mr. Clinton said of the partnership with his former aide James B. McDougal to develop land in the Ozarks.

Financial Exposure

The partnership began in 1978, when Mr. Clinton was Arkansas's Attorney General. "I was not yet Governor," he said today, and Mr. McDougal "was not in any financial institution."

"The article seems to imply that my wife and I had no financial exposure," he went on. "There's nothing could be further from the truth."

"We were jointly and severally liable for more than \$200,000 worth of debt," Mr. Clinton said. He termed the relationship "purely private investments," that was "nothing but a big money loser for me."

The Times article raised questions about the Clintons' relationship with Mr. McDougal and Whitewater Development, a corporation that planned to turn the 200 acres of Ozarks property into lots for vacation homes.

Records obtained by The New York Times were incomplete, but the article questioned the Clintons' involvement in the venture at a time when Mr. McDougal's savings institution, Madison Guaranty, was subject to regulation by the state securities commission.

The article also said that on their tax returns in 1984 and 1986 the Clintons improperly deducted at least \$5,000 in interest payments on bank loan pay-

THE NEW YORK TIMES
March 9, 1992

Lawyers Agree To Pay Big Fine In S. & L. Ca

By STEPHEN LABATON

Special to The New York Times

WASHINGTON, March 8 — A big New York law firm today agreed to pay \$41 million to settle Government accusations that it had improperly withheld damaging information about its client, a large savings association whose failure has epitomized the savings and loan industry's disaster.

Shortly before settling the \$275 million lawsuit that the Government filed six days ago, lawyers at the firm, J. Scholer, Fierman, Hays & Handler, insisted again that they did nothing improper in representing Charles Keating Jr. and his Lincoln Savings and Loan Association of Irvine, Calif. They were forced to settle, they said, by the Government's move to freeze the firm's assets, which put the partnership close to collapse.

The Government said this eve that the settlement would "assure the firm's activities that gave rise to the case are never again repeated."

The quick settlement, in which J. Scholer neither admits nor denies Government's accusations, is expected to have a profound impact on a wave of lawsuits the Government is preparing to file in the next few weeks against lawyers, accountants and savings executives from scores of savings associations seized in March 1989. The statute of limitations on those cases runs out in June.

"It is unlikely that it is the last we will use such an order process against," said Harris Weinstock, counsel to the Office of Thrift Supervision, the agency that regulates the savings industry and that filed the suit along with the Justice Department. Freezing assets is a tactic the Government has traditionally re-

Continued on Page C3, Column

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The deductions were \$11,000 in taxes. Mr. Clinton said he and his wife were reviewing their tax records and would repay the amount, which his lawyer, Susan P. Thompson, described as an "honest error."

Before the Times article was published, the Clintons turned down requests for interviews, instead retaining lawyers to answer questions about the enterprise. The lawyers were interviewed for several hours in person and several hours by telephone and provided 13 to 20 documents.

In an interview in The Arkansas Democrat-Gazette today, Mr. McDougal was quoted as saying that the Clintons did nothing improper and that neither he nor his savings and loan got preferential treatment from state regulators.

In a separate statement at Mr. Clinton's news conference today, Sam

Heuer, Mr. McDougal's lawyer, said he was "appalled and affronted by the allegations and reckless disregard of the facts by The New York Times and its reporter, Jeff Gorch."

He said that any suggestion that Mr. McDougal used money from Madison Guaranty to subsidize the Clintons' portion of the joint partnership "is not only false but probably actionable by Mr. McDougal."

Mr. Heuer said in the statement that there was "no link between Whitewater Development Company and Madison Guaranty Savings and Loan."

The Times article cited records showing that in 1984, when Whitewater's account at Madison was over-

drawn, money was deposited to make

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up the shortage from Madison Market, an affiliate of the savings and loan that derived its revenue from the institution.

The article also called attention to Mr. Clinton's appointment of Beverly Bassett Schaffer, a lawyer in a firm that had represented Madison Guaranty, as State Securities Commissioner at a time when the institution faced possible closure by the state.

Today Mr. Clinton said his appointing Mrs. Schaffer was not a way of aiding Mr. McDougal. "I had no contact with her whatsoever on this and neither did my wife have any contact," the candidate said.

Mrs. Schaffer, in a statement also released by the campaign, concurred.

R

To: James M. Barker@Legal-sce@RTCCDC
 Cc:
 Bcc:
 From: Stephen J. Katsanos@Comm@RTCCDC
 Subject: Contacts with Treasury re. Madison
 Date: Wednesday, March 9, 1994 9:46:42 EST
 Attach:
 Certify:
 Forwarded by:

 Top the best of my recollection, my contacts with the Treasury Department and White House regarding Madison and the Rose Law Firm are as follows.

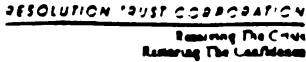
- 1) Copies of the Early Bird, a daily summary of stories we anticipate will appear based on our conversations with reporters, were sent to several individuals at the Treasury Department. Two recipients requested they be sent this publication shortly after Roger Altman was installed as interim CEO. The recipients, who obtain this via fax, are: Roger Altman and Joan Logue-Kinder. Altman's request was through Logue-Kinder. Jean Hanson's office on October 4, 1993, requested that she be added to the daily fax list for the Early Bird. These individuals also were sent our News in Brief each Friday afternoon. This is a one page summary of RTC stories that have been published during the week.
- 2) Jack DeVore, former press director at Treasury, on October 1, 1993, called me, according to a telephone message slip. I assume Jack was returning my call, which I believe would have related to a call to me on September 30 from Sue Schmidt of the Washington Post. Sue was trying to follow several leads regarding potential conflicts in the use of the Rose Law Firm, including the involvement of Web Hubbel, and suggestions that a criminal referral relating to Madison was being held up in Washington. My call to Jack was to advise him that it appeared Sue was preparing a story that would suggest improper handling of a field investigation, attributable to unnamed RTC sources. I told him that the interim CEO should be prepared for such a story. I had another conversation with DeVore, I believe following Sue Schmidt's visit around October 13 to the home of one of our investigators in Kansas City. Jack had called regarding procedures normally followed in the handling of a criminal referral. Specifically, is a referral made by Washington or a field office.
- 3) Joan Logue-Kinder called, I believe late October after DeVore left the Treasury Department. She had wanted a "heads up" on reporters queries concerning the Rose Law Firm and Hillary Clinton, but suggested they not be identified in the Early Bird. She also instructed me to call Lisa Caputo at the White House to discuss Sue Schmidt's interest in Hillary Clinton. She gave me Caputo's phone number and said it would be good to keep her informed.
- 4) Called Lisa Caputo per Logue-Kinder's instructions. Told her Sue Schmidt was interested in knowing if Hillary Clinton had ever attended meetings involving RTC lawyers, Rose Law firm, concerning Madison. Caputo indicated she knew Sue and was surprised Sue had not called her directly.
- 5) Howard Schloss of Treasury called I believe on February 15 and directed me to refrain from mentioning Interim CEO Roger Altman in Early Bird items relating to Madison because of risk that the Early Bird might make it into hands of people who shouldn't see it. Told Schloss: he was not in a position to give me orders. Early Bird was initiated as a vehicle for informing RTC

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senior management of stories we believe reporters will eventually run with. Altman is Interim CEO and as long as he serves in that capacity it is my job to inform him of media activities. Schloss said he would get a memo rolling that would give me instructions from Altman.

Firm and Hillary Clinton excluded
following SueSe

S



Honorable Jim Leach
Ranking Minority Member
Committee on Banking, Finance
and Urban Affairs
House of Representatives
Washington, D.C. 20515

This is in response to your letter of March 11 requesting information about which Democrat and Republican Members of the House and Senate received "the same briefings that RTC and Treasury officials provided the White House on criminal referrals and other matters related to Madison Guaranty."

We hope this information is of assistance to you. If you have any questions, please let me know.

John R. —

801 17th Street, N.W. Washington, D.C. 20434

001331

RTC Congressional Briefings Relating to Madison Guaranty

Date	Congressional Staff	RTC Officials	Contents of Briefing
12.22.93	Anthony Cole Joseph Seidel John Scharfenberg Margo Tank (Rep. Leach)	Peter Knight Bill Collinslaw Casey Carter	Discussion of RTC approach in responding to Rep. Leach's investigation and establishing operating parameters
12.27.93	Joe Seidel (Rep. Leach)	Peter Knight Casey Carter	Review of various documents
12.30.93	Mike McGarry (Rep. Leach)	Bowen Huston	Review of various documents in Portland City office and visit to Iron Mountain Storage facility.
1.5.94	Joseph Seidel John Scharfenberg Mike McGarry Margo Tank (Rep. Leach)	Peter Knight Carl Gamble Jack Binkley Phil Lodeanmuth Steve Primrose Bill Collinslaw	Discussion of RTC position on Rep. Leach's standing as Ranking Minority Member concerns about Privacy Act, Trade Secrets Act, and related matters.
1.24/94	Howard Menell Raymond Natter Doug Nappi (Sen. D'Amato)	Jack Ryan Peter Knight	Discussion of RTC approach in responding to Sen. D'Amato's investigation and establishing operating parameters Discussion included the RTC's position on the Senator as Ranking Minority Member RTC concerns about document production relating to civil and criminal investigations; a general discussion of pending agreements; and a discussion of whether the statute of limitations expired on August 9, 1994. This last point was discussed further in a telephone conference call later that week between Raymond Natter of Senator D'Amato's staff and Peter Knight and Mark Gabovellian of the RTC
1/31/94	Doug Nappi (Sen. D'Amato)	Peter Knight Jack Binkley Casey Carter Steve Primrose	Discussion of RTC document inventory. RTC concerns about Privacy Act, etc., and related issues.
2/28/94	Joseph Seidel Mike McGarry John Scharfenberg Gary Parker (Rep. Leach)	Peter Knight Tom Hindes	Discussion of Rep. Leach's request for certain PLS information pursuant to Chairman Goodman's May 12, 1993 letter



RESOLUTION TRUST CORPORATION

Restoring The Crisis
Restoring The Confidence

March 3, 1994

MEMORANDUM TO: Peter Knight
MEMORANDUM FROM: Casey Carter CMC
SUBJECT: Meetings with Congressional Offices
Regarding Madison Guaranty

The RTC has had the following meetings with congressional offices relating to Madison Guaranty Savings and Loan as of March 3, 1994. These discussions primarily involved broad or specific document requests.

Date	Cong. Office	Cong. Staff	RTC Staff
December 23, 1993	Cong. Leach	Tony Cole Joe Seidel John Scharfenberg Margo Tank	Peter Knight Bill Collishaw Casey Carter
December 27, 1993	Cong. Leach	Joe Seidel	Peter Knight Casey Carter
December 30, 1993	Cong. Leach	Mike McGarry	Bowen Hinton
January 5, 1994	Cong. Leach	Joe Seidel John Scharfenberg Mike McGarry Margo Tank	Peter Knight Carl Gamble Jack Binkley Phil Lindermuth Steve Primrose
January 24, 1994	Sen. D'Amato	Howard Mennell	Jack Ryan Peter Knight
January 31, 1994	Sen. D'Amato	Doug Nappi	Peter Knight Jack Binkley Casey Carter Steve Primrose
February 28, 1994	Cong. Leach	Joe Seidel Mike McGarry John Scharfenberg	Peter Knight Tom Hinder

201 17th Street, N.W. Washington, D.C. 20036

001531

FAX TRANSMITTAL



Office of the General Counsel
DEPARTMENT OF THE TREASURY
1500 Pennsylvania Ave., N.W., Room 3000
Washington, DC 20220
Telephone: (202) 622-0887
FAX: (202) 622-2882

DATE: 5-2-94TO: Peter KnightPAGES TO FOLLOW: 2FROM: Alan Hanson

SUBJECT: _____

Address FAX No.: 416-2452 Confirmation No.: _____

Notes and Special Instructions:

Peter:Please confirm that the
attached reflects our conversation

MEMORANDUM FOR DEPUTY SECRETARY ALTMAN

FROM: JEAN E. HANSON

SUBJECT: Conversation with Peter Knight

Peter Knight had not had an opportunity to prepare a chronology of RTC contacts with Senator D'Amato's staff. However, he gave me the following information which I am asking him to confirm.

Tuesday, January 14, 1994

- Peter Knight was contacted by Senator D'Amato's staff to discuss the Madison Guaranty situation. A meeting was requested with the heads of FLS and investigations; that was declined. This was the first contact from D'Amato's staff on Madison Guaranty.
- Later that day, Jack Ryan and Peter Knight met with Senator D'Amato's staff as requested.
 - D'Amato's staff present were: Howard Munnell, staff director; Ray Natter, general counsel; and Doug Nappi.
 - The discussion focused on document production, i.e., what the RTC believed could and could not be provided.
 - There was also a discussion of the statute of limitations on Madison Guaranty and when it was expected to expire. Ray Natter suggested that the statute of limitations would not expire until August 1994. He was told the RTC would look into that and discuss it further with him.
- Later that week (Wednesday - Friday, January 26-28)
 - Peter Knight held a conference call with Mark Cabrellian of the RTC legal staff and Ray Natter to discuss the expiration of the statute of limitations. After discussing the legal issues, Mr. Natter agreed that the statute of limitation on Madison Guaranty would expire prior to August. The exact date of the expiration had a three day time span (2/28 - 3/2) because of historical actions in connection with

SECRET
Madison Guaranty's takeover. February 28 was the most conservative date (and therefore most cautious, from the RTC's point of view).

Later that week (Wednesday - Friday, January 26-28) or the following Monday, January 31.

- Peter Knight, Jack Bankley and Casey Carter met with Senator D'Amato's staff to discuss the general process of document production.

T



MEMORANDUM

Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

To: EDWARD S. KNIGHT, EXECUTIVE SECRETARY

From: EUGENE A. LUDWIG, COMPTROLLER OF THE CURRENCY

Date: March 11, 1994

Subject: GRAND JURY SUBPOENA

As indicated in my March 10, 1994 memorandum to you, I have directed the OCC's Chief Counsel's Office to conduct a thorough review of all OCC records for any document or communication which may be responsive to the Grand Jury Subpoena to the Department of the Treasury from the Office of the Independent Counsel. The Chief Counsel's Office was already conducting a review pursuant to a request for information made by Senator Bond during the recent Senate Banking Committee hearings concerning the Administration's banking agency consolidation proposal. Senator Bond's inquiry was whether I or any member of my staff had discussed the consolidation proposal with any member of the White House staff and, if so, whether questions relating to Worthen Banking Corporation, Worthen Bank of Little Rock, Worthen Financial, Madison Guaranty Savings and Loan or Whitewater were ever raised. The Chief Counsel's Office review is now complete, and the information in this memorandum is based on that review and my own best recollection.

Enclosed are copies of my daily meeting schedules, my telephone logs, both incoming and outgoing, and a summary sheet indicating calls between myself and the White House staff, from February 1993 to the present. I am supplying these records of meetings and calls to be as fully responsive to the subpoena as possible.

Although I am certain that the Whitewater matter was mentioned in a number of meetings and calls referred to in these materials, to the best of my recollection it was mentioned only in passing or in generalities, except as described below. Similarly, Whitewater was mentioned in passing in a number of informal conversations and on social occasions in which I participated with various members of the White House staff which are not reflected in the enclosed official meeting schedules and telephone logs. The only occasions on which Whitewater was discussed other than in passing or in generalities are also discussed below. To the best of my knowledge, no information was exchanged by me or by the White House except a passing reference to public information.

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I can only recollect two discussions in which the subject of Whitewater or Madison Guaranty was mentioned other than in passing. On the first occasion, during the Renaissance Weekend gathering that took place at Hilton Head, South Carolina over the most recent New Year holidays, the President asked me whether it would be permissible for me, as a lawyer knowledgeable about banking law, to provide advice and counsel on any of the legal/regulatory issues relative to the Whitewater matter. Beyond asking this question, the only information I recollect that he imparted to me was that he had done nothing wrong, and moreover had lost money in the transaction.

Prior to discussing the matter with the President, I sought the advice of the White House Counsel's Office and others regarding the permissibility of discussing Whitewater with the President. I spoke with Treasury General Counsel Jean Hanson and White House Counsel Bill Kennedy and Joel Klein. If my memory serves me correctly, I might have spoken with Joshua Steiner or others briefly, trying to track down Ms. Hanson or the White House since this was a holiday weekend. I told them that I was not certain whether to discuss the matter with the President, and knew very little about the matter or the White House response to it. Based on the advice I obtained, I determined that it would be impermissible for me to discuss the matter with the President or the First Lady. Accordingly, we did not discuss the matter.

The other occasion occurred on January 19, 1994, when I contacted Margaret Williams of the White House staff and offered my own unsolicited view that the White House should promptly provide full public disclosure of all materials associated with Whitewater, if that had not already been done. I also said that I thought they should devote one full-time lawyer and/or other full-time staff to the matter because of the great public visibility it was getting. Otherwise, we did not exchange any information.

As part of the Chief Counsel's Office review, we also interviewed other OCC staff members and had them review their meeting schedules and telephone logs. As a result of that review, a number of references to routine meetings and other contacts with various members of the White House or Treasury staffs have also been identified. Because none of my staff members can recall any substantive conversations about Whitewater with anyone from the White House or Treasury, I am not enclosing any of these schedules or logs.

The only other documents we have found that are responsive to the inquiry are the copies of FOIA requests from The Baltimore Sun and The Washington Post to the FDIC requesting documents concerning Madison Guaranty Savings and Loan. Both letters were sent to me as a courtesy by the FDIC, after I was assured that they were public documents. I forwarded these letters for information only to Messrs. Bruce Lindsey and David Dreyer at the White House and Messrs. Frank Newman and Joshua Steiner at the Treasury Department.

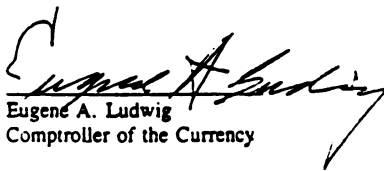
- 3 -

As you know, as Comptroller of the Currency I am an ex officio member of the board of directors of the FDIC. As part of his review, my Chief Counsel's Office has reviewed whether or not any matters or non-public information relating to Whitewater came before the FDIC board or were otherwise brought to my attention during my tenure, and has confirmed they did not. Likewise, as Comptroller of the Currency and FDIC board member I have no responsibility for any matters which may have come before the Office of Thrift Supervision or the Resolution Trust Corporation. To the best of our knowledge, there was no contact between me or any member of my staff on any Whitewater-related matters which may have been pending before those organizations.

As previously indicated, neither my staff nor I have destroyed or otherwise disposed of any document or communication which may be responsive to the subpoena since receiving your March 7 and 9, 1994 memoranda.

My staff and I understand that we have a continuing obligation to preserve any document or communication found or created which may be responsive to the subpoena, and we understand that we have a continuing obligation to inform you if any such document or communication is found or created. Accordingly, we will provide a copy of our response to Senator Bond's inquiry and any other document or communications which may be responsive to the subpoena, as soon as possible.

I would be pleased to provide any additional information I can concerning any of the above to the Office of the Independent Counsel. Please contact William P. Bowden, Jr. the OCC's Chief Counsel, if we may be of any further assistance.



Eugene A. Ludwig
Comptroller of the Currency

MEMORANDUM

TRANSMISSION REQUEST

DATE 12-2-93

TO

NAME Bruce LindseyCOMPANY White House

DEPT/MAIL STOP _____

CITY _____

OFFICE PHONE 456-2668FAX PHONE 456-2683

FROM

NAME Eugene A. LudwigPHONE 874-4900OCC FAX: 202-874-4950

Additional addresses or other information:

CONTACT PERSON: Rita JohnsonPHONE NUMBER: 874-4900

SENDER, PLEASE CHOOSE ONE OF THE FOLLOWING:

- ☒ Return originals to contact person
- ☐ Will pick up originals
- ☐ Destroy originals

11:53



Washington Bureau
1627 K Street NW
Suite 1100
Washington, DC 20006-17
(202) 452-6250

November 30, 1993

Hoyle Robinson, Executive Secretary
Federal Deposit Insurance Corp.
550 17th St. NW 20429

Dear Mr. Robinson,

Pursuant to the federal Freedom of Information Act, I request access to and copies of ~~all~~ documents related to the now-defunct Madison Guaranty Savings and Loan of Arkansas including, ~~but not limited to:~~

- the government's examinations of Madison between 1981 and 1986 and its reports;
- correspondence between regulators and lawyers at the Rose Law Firm of Little Rock, Ark., concerning Madison, and any memoranda to, from or about the Rose Law Firm and/or its partners;
- the FDIC's 1989 lawsuit against, and subsequent settlement with, Madison's accountants.

I agree to pay reasonable duplication fees for the processing of this request. However, please notify me prior to your incurring any expenses in excess of \$500.

Through this request, I am gathering information on Madison that is of current interest to the public because of current investigations into its dealings and its officers. This information is being sought on behalf of The Baltimore Sun.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by phone, rather than by mail, if you have questions regarding this request. I can be reached at (202) 416-0250, and look forward to your reply within 10 business days, as the statute requires. Thank you for your assistance.

Sincerely,

Susan Baer
Susan Baer
Washington Correspondent

11/30 to W/K
request is being
to the category
dec's listed
advised her the
reports are being

the following

152

A Times Mirror
Newspaper

The Washington Post

1130 15th Street, N.W.
WASHINGTON, D. C. 20001
(202) 334-6000

WANTED: DIRECT TELEPHONE NUMBER

334-6157

Jack Smitz
Deputy General Counsel
7012

Dear Mr. Smitz

Pursuant to the Freedom of Information Act (5 U.S.C. 552 as amended), I hereby request disclosure of the following records for inspection and possible copying:

Any and all memos or other documents concerning the retention of the Rose law firm in the FDIC's case against the accounting firm of Frost & Co., including a memo from Ken Schneck to John O'Donnell dated August 1988.

If you regard any of these records as exempt from required disclosure under the Act, I hereby request that you exercise your discretion to disclose them nevertheless.

I further request that you disclose the listed documents as they become available to you without waiting until all the documents have been assembled.

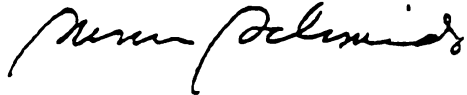
I am making this request on behalf of The Washington Post, a newspaper of general circulation in the Washington, D.C. metropolitan area and throughout the United States. The records disclosed pursuant to this request will be used in the preparation of news articles for dissemination to the public. Accordingly, I request that, pursuant to 5 U.S.C. 552 (a)(4)(A), you waive all fees in the public interest because the furnishing of the information sought by this request will primarily benefit the

.../2

public. If, however, you decline to waive all fees, I am prepared to pay your normal search fees (and copying fees if I decide to copy any records), but I request that you notify me if you expect the search fees to exceed \$100.

I look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Norman Polunin". The signature is written in dark ink and is positioned below the word "Sincerely,".

u

STEPTOE & JOHNSON

ATTORNEYS AT LAW

1330 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036-1788

PHOENIX, ARIZONA
TWO RENAISSANCE SQUARE

TELEPHONE: (602) 257-5200
FACSIMILE: (602) 257-5299

(202) 429-3000
FACSIMILE: (202) 429-3902
TELEX: 88-2503

STEPTOE & JOHNSON INTERNATIONAL
AFFILIATE IN MOSCOW, RUSSIA

TELEPHONE: (011-7-501) 829-9700
FACSIMILE: (011-7-501) 829-9701

REID H. WEINGARTEN
(202) 429-6238

July 22, 1994

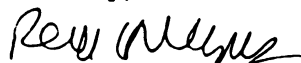
Joseph Reilly, Esquire
Richard Leon, Esquire ✓
U.S. House of Representatives
Committee on Banking, Finance
and Urban Affairs
2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Messrs. Reilly and Leon:

Enclosed please find the relevant portions of Joshua Steiner's diary, as requested by the Committee in connection with its Whitewater investigation. These materials are being provided to you with the understanding that they will be handled in accordance with the confidentiality procedures you provided me July 20th by telecopy.

Please feel free to contact me with any questions on this matter.

Sincerely,



Reid H. Weingarten

RHW/pk
enclosure

DIARY OF JOSHUA L. STEINER

I. 12/2/93 - 1/9/94, lines 1-3: Whitewater (Clinton's real estate investments) and Madison S&L dominate the news. Clear lesson: release everything right away.

II. 1/24-2/12/94, lines 1 forward: Two extremes: In DC spent long hours w/ RA going over how he should handle the RTC's investigation of Whitewater. The statute of limitations on Madison Guaranty cases was supposed to expire 2/28. Should RA recuse himself or should he stay involved. The hurdle was so high (fraud) that it seemed unlikely the RTC would bring suit or seek a tolling agreement from BC/HRC, but the chance existed. RA originally decided to recuse himself but under intense pressure from the White House, he said he would make the final determination based on a recommendation from Ellen Kulka, the GC. The GOP through D'Amato began a countdown to the 28th which was particularly ironic since he had voted against extending the statute during the RTC reauthorization period. As it turns out, RA's problem will probably pass when the Congress decides to extend the statute once again. Pressure on RA will certainly mount next week when Congress holds hearings on the RTC given that Ricki Tiegert the FDIC nominee declared that she would recuse herself from all Madison related issues due to her friendship w/ the Clintons. The WSJ also got into the act w/ a scathing attack on RA and Gene Ludwig.

III. and IV. 2/13-2/27/94, line 7 forward: Every now and again you watch a disaster unfold and seem powerless to stop it. For weeks we have been battling over how RA should handle the RTC investigation of Madison Guaranty S&L. Initially, we all felt that he should recuse himself to prevent even the appearance of a conflict. At a fateful WH mtg w/ Nussbaum, Ickes and Williams, however, the WH staff told RA that it was unacceptable. RA had gone to brief them on the impending statute of limitations deadline and also to tell them of his recusal decision. They reacted very negatively to the recusal and RA backed down the next day and agreed to a defacto recusal where the RTC would handle this case like any other and RA would have no involvement. We are very concerned that at the RTC oversight hearings the GOP would hammer away at the recusal issue so we renewed discussions w/ the WH about what RA would do when his term expired on March 30. Once again they were very concerned about him turning the RTC people they didn't know so RA did not formally commit himself to stepping down (he could stay on if we had formally nominated a successor). At the hearing, the recusal amazingly did not come up. The GOP did hammer away at whether RA had had any mtgs. w/ the WH. He admitted to having had one to brief them on the statute deadline. They also asked if staff had met, but RA gracefully ducked the question and did not refer to phone calls he had had. The next day, the NYT ran a front page story on the mtg. The heat was on. We spent a tortured day trying to decide if he should recuse himself. I spoke w/ Podesta to let him know

of our deliberations. Very frustrating that he was the chosen point of contact since he clearly was not in the complete confidence of George and Harold. After Howell Rains from the NYT called to say that they were going to write a brutal editorial, RA decided to recuse himself. Harold and George then called to say that BC was furious. They also asked how Jay Stephens, the former USA, had been hired to be outside counsel on this case. Simply outrageous that RTC had hired him, but even more amazing when George then suggested to me that we needed to find a way to get rid of him. Persuaded George that firing him would be incredibly stupid and improper. The NYT ran a very mean editorial which referred to the "bone headed conclave convened by RA." Lessons: Do what you think is the right thing early (recuse); remember that everything might eventually be asked about under oath; don't let the WH get involved in any way.

V. 2/13-27/94: Such an incredible city. Been battling w/ the RTC/Madison. Wrote two pages about what's been going on, suddenly realized that I could be subpoenaed like Packwoods and the most innocuous comments could be taken out of context. So on that subject, nothing.

V



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

July 24, 1994

The Honorable Henry B. Gonzalez
Chairman
Committee on Banking, Finance
and Urban Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

As part of our continuing response to the Committee's letter of June 27, 1994, I am forwarding four pages (2988-2989 and 2992-2993). Because of the personal nature of these documents we have asked your staff to be particularly sensitive to their confidential nature during the course of the Committee's inquiry. We appreciate this consideration.

If we can be of further assistance, please do not hesitate to contact me or Assistant General Counsel Robert M. McNamara.

Sincerely,

A handwritten signature in dark ink, appearing to read "Edward S. Knight".

Edward S. Knight
Executive Secretary and Senior
Advisor to the Secretary

11/91

D

- he had been asked to come^u to with to speak to President at
 Whitewater (together with Peick, Riley & Babbitt); but
 Christine Vanev rushed over to urge him not to do it because
 Peick reports brought me to her, he took that advice.

16.

2988

1/5/94

D

- unfortunately, we've mislabeled parts of this: handling of the Clinton personal files from Vince Foster's office to R's personal lawyer delays in providing them to DOJ;



THE DEPUTY SECRETARY OF THE TREASURY
WASHINGTON

1463/163

Rosen - Vintage
DEAR MR. PRESIDENT, *Altman - you are from one of our country's finest.*
I WANTED TO EXPLAIN MY DECISION ON THE *U.S.* RECURSAL AND TO ASSURE YOU THAT I TRIED TO ACT WITH THE ADMINISTRATION'S BEST INTERESTS IN MIND.

THE DECISION TO HAVE THAT MEETING WITH YOUR STAFF WAS DUMB. I TAKE FULL RESPONSIBILITY FOR IT. MY INTENTION WAS O.K. - EXPLAIN THE PROCEDURES THE REC WOULD BE FOLLOWING (NO DISCUSSION OF THE SUBSTANCE OF THE CASE) - BUT THE APPEARANCES ESCAPED ME AND NEVER SHOULD HAVE.

RELATIVE TO RECURSAL, IT HAS BEEN UNDER CONSIDERATION FOR SEVERAL WEEKS. SECRETARY BENTON, TREASURY GENERAL COUNSEL AND THE REC COUNSEL HAD URGED IT IN THE STRONGEST TERMS.

NEVERTHELESS, I HAD THOUGHT IT SUPERFLUOUS AND HAD DECLINED TO TAKE THAT STEP. MY APPOINTMENT WAS SCHEDULED TO EXPIRE ON MARCH 30. AND, MY INSTRUCTIONS TO REC STAFF HAD BEEN TO HANDLE THIS MATTER IN IDENTICAL FASHION TO ANY OTHER CASE. THIS WAS TO ENSURE AN IMPARTIAL PROCESS.

BUT, AFTER MY TESTIMONY ON THURSDAY, IT BECAME CLEAR THAT APPEARANCES OF A CONFLICT WERE TAKING HOLD. I WAS ADVISED THAT THE ADMINISTRATION COULD BE HAMMERED OVER THIS FOR SOME TIME.

I CONCLUDED, THEN, THAT SUCH ONGOING CRITICISM WOULD BE UNDESIABLE. *163*



WASHINGTON

- 2 -

ASSOCIATED WITH MY REMAINING UNRECORDED FOR FOUR
MORE WEEKS.

HAVING RESISTED THE INITIAL ADVICE, THIS WAS
A HARD DECISION TO MAKE. I HOPE YOU UNDERSTAND MY
MOTIVATIONS. I APOLOGIZE FOR THE EMBARRASSMENT THIS
HAS CAUSED.

SINCERELY,

Rg.

1/6/99

Diary

- on Whitewater, Maggie told me that HRC was "paralyzed" by it.
- if we don't solve this "within the next two days" - you don't have to worry about her schedule or health care
- we went over to see George on Whitewater yesterday; to argue for "lacing the boil"
- Maggie's strong inference was that he with was trying to negotiate the scope of an independent counsel with fear of killing someone's difficulty
- HRC "didn't want (the counsel) poking into 20 years of public life in Arkansas"

W

March 3, 1994

(Draft) Statement: Secretary Lloyd Bentsen

I only learned of the meetings yesterday. As Chairman of the RTC Oversight Board, I am statutorily barred from any involvement in any case before the RTC. In retrospect, given their appearance, I wish these meetings had not occurred.

I have instructed the Department to have no future contacts with the White House about this case.

I did not attend any
of these meetings
I was not aware of any of
the meetings.

I have confidence
of the Treasury
officials. I did not
attend the meeting
only the report
of the officials
of the department
I received instructions
to the effect that
I was not to be
refused to let
any of the
White House
through
records.

I have instructed
Treasury officials
to have no
contact with
the White House
on this case.

DEPARTMENT OF THE TREASURY

TREASURY



NEWS

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FOR IMMEDIATE RELEASE
MARCH 3, 1994

STATEMENT OF TREASURY SECRETARY LLOYD BENTSEN

I have confidence in the Treasury officials, but to ensure that all ethical guidelines were followed, I have instructed the matter be referred to the Office of Government Ethics for a thorough review. I did not attend any of these meetings, nor was I informed of any of these meetings.

I have instructed Treasury officials to have no contact with the White House about this case.

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LB-681

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**CONCLUDING STATEMENT
 WHITEWATER HEARING
 REPRESENTATIVE JAMES A. LEACH**

JULY 26, 1994

Let me conclude by expressing appreciation to the Chairman for a fine job in conducting this initial hearing.

Let me also express the country's appreciation that the White House has available such thoughtful legal advice.

It is important, however, before this hearing closes to have the record clarified on at least one point, with a note that this clarification, while not a "smoking gun," might be labelled a "poignant pen" problem.

In Mr. Cutler's exchange with Mr. Lazio and Mr. King, Mr. Cutler stated that Mr. Lindsey had no knowledge of the possibility that Governor Tucker might be referenced in a criminal referral until October 7, a day after the President met with the Governor. Actually, according to the handwritten notes of White House Associate Counsel Cliff Sloan, Ms. Hansen, the Treasury General Counsel, informed Sloan on September 30 that Tucker was a target of the referrals and that the Clinton '85 campaign was listed as a co-conspirator. According to the record Mr. Sloan briefed Mr. Lindsey who briefed the President on the referrals prior to the President's meeting with Tucker.

Why does this revelation matter? The referrals were sent from Kansas City in draft form on September 24 to RTC-Washington; they were sent to the Justice Department on October 8.

Insider notification of a possible mention in a criminal referral gives a political figure more than a P.R. heads-up. It gives a political figure two options: 1) to attempt to sidetrack an investigation; 2) to frustrate an investigation by possible destruction of documents. Whether the first approach was implicitly undertaken, clearly it, as Mr. Cutler noted, didn't work. Whether any documents were tampered with, we don't know. What we do know is that the 1985 Clinton campaign records are no longer available.

What we do know is that the President chose to meet with Governor Tucker, an individual who any lawyer with an understanding of the referrals should have been ethically obligated to advise against.

The implications of insider advantage given any American, even the President, is precisely why it was unethical for Treasury officials to brief the White House and precisely why, once informed, the White House General Counsel's office was ethically obligated not to brief or precipitate the briefing of the President.

These notifications represented clear violations of then existing ethical rules.

The Minority remains convinced that, when it comes to criminal investigations, there is no compelling case for a P.R. heads up for any individual, including the President. No American should be considered privileged before the law.

JOSEPH P. KENNEDY R. MASSACHUSETTS CHAIRMAN
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STATEMENT OF REPRESENTATIVE JOSEPH P. KENNEDY II (D. - MA)
ON WHITewater HEARINGS

JULY 26, 1994

LET'S PUT THIS EPISODE IN SOME PERSPECTIVE. WE HAVE ALREADY HEARD FROM MR. FISKE, THE SPECIAL COUNSEL, THAT THERE WERE NO CRIMINAL VIOLATIONS BY ANYONE IN THE ADMINISTRATION CONCERNING WHITewater. THIS MORNING MR. CUTLER, THE WHITE HOUSE SPECIAL COUNSEL, WILL TELL US THAT THERE WERE NO ETHICAL VIOLATIONS BY WHITE HOUSE STAFF. YES, THERE WAS SOME BEHAVIOR THAT, SUBJECTED TO THE LIGHT OF DAY, HAS PROVED EMBARRASSING AND MOTIVATED BY POOR JUDGMENT. IF EVERY ACTION WE TOOK WERE GIVEN THE SAME SCRUBBING, I HAVE NO DOUBT THAT THE SAME CONCLUSIONS WOULD BE REACHED.

BUT THERE IS ABSOLUTELY NO EVIDENCE OF ANY ATTEMPT BY ANYONE TO STEER THE WHITewater CASE TO POLITICALLY SAFE GROUND. INDEED, LET ME REMIND MY COLLEAGUES THAT THIS CASE IS STILL PROGRESSING THROUGH THE NORMAL CHANNELS OF THE RTC. AND THE DEMOCRATS HAVE TAKEN STEPS TO ENSURE THAT THAT PROGRESS IS NOT IMPEDED. THE PRESIDENT HAS HIRED A SPECIAL COUNSEL. HE AND HIS STAFF HAVE BEEN TOTALLY COOPERATIVE WITH THAT COUNSEL. AND THE CONGRESS IS HOLDING HEARINGS.

FOR MONTHS, THE REPUBLICANS HAVE BEEN BARKING ABOUT WHAT THEY CLAIM TO BE A DIRE THREAT TO THE DEMOCRATIC PROCESS. THEY HAVE FANCIED THEMSELVES ZEALOUS WATCHDOGS AT THE DOOR OF LIBERTY. BUT WHAT WE'VE GOT HERE IS A CASE OF THE DOG CHASING ITS OWN TAIL. THE REPUBLICANS HAVE FAILED TO PROVE ANY WRONGDOING. AND SO THEY ARE LEFT PURSUING THEIR OWN INCREASINGLY DESPERATE AND BIZARRE THEORIES -- THEORIES ABOUT CONSPIRACIES AND COVER-UPS THAT HAVE ABSOLUTELY NO PROOF TO BACK THEM UP.

WHERE WAS THEIR ZEAL WHEN IT WAS TRULY NEEDED? WHERE WERE THEY WHEN OLLIE NORTH WAS SELLING WEAPONS TO TERRORISTS? SILENT. WHERE WERE THEY WHEN GEORGE BUSH WAS HELPING TO BUILD UP SADDAM HUSSEIN'S WAR MACHINE? SILENT. AND WHERE WERE THEY WHEN NEIL BUSH AND HIS CRONIES AT SILVERADO USED TAXPAYER-BACKED FUNDS TO SET UP THEIR OWN PRIVATE PIGGY BANK FOR FAVORED HUSTLERS? AGAIN, SILENT.

THIS COMMITTEE HAS HELD NUMEROUS HEARINGS RELATED TO THE THRIFT CRISIS OF THE 1980'S. HEARINGS ON WHITewater FIT LEGITIMATELY INTO THE COMMITTEE'S OVERSIGHT FUNCTION. BUT LET US NOT GET AHEAD OF OURSELVES. LET'S NOT ALLOW THE FACTS TO BE DISMISSED BECAUSE THEY DON'T FIT WITH PARTISAN CONSPIRACY THEORIES.

MAURICE D. HINCHEY
26TH DISTRICT, NEW YORK

COMMITTEE ON BANKING,
FINANCE AND URBAN AFFAIRS

SUBCOMMITTEES
FINANCIAL INSTITUTIONS SUPERVISION
CONSUMER CREDIT AND INSURANCE
GENERAL OVERSIGHT AND INVESTIGATIONS

COMMITTEE ON
NATURAL RESOURCES

SUBCOMMITTEES
NATIONAL PARKS AND PUBLIC LANDS
GENERAL OVERSIGHT

Congress of the United States
House of Representatives
Washington, DC 20515-3226

STATEMENT OF
CONGRESSMAN MAURICE D. HINCHEY

Before the House Committee on
Banking, Finance, and Urban Affairs

July 26, 1994

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Pursuant to House Resolution 394, the House Banking Committee today begins its oversight hearings relating to Madison Guaranty Savings and the Whitewater Development Corporation. We have before us a very capable, experienced, and articulate witness in Lloyd Cutler, the White House Counsel. He has a considerable task before him today, and I look forward to his testimony, including the summary of the ethics investigation conducted on the activities of the White House personnel related to this matter.

I want to make it clear, Mr. Chairman, that I enter today's hearing with an open mind about the Whitewater matter. There have been numerous allegations made in the press over the past year, many that have partisan motives. Unfortunately, allegations have dominated the dialogue on the issue and there has been a remarkable lack of facts presented. I am looking forward to having some of the facts, and I know that the American people are as well. I am hopeful that we can all come out of today's hearing with a better idea about why the meetings between White House and Treasury officials took place, who was involved, and what actually transpired. The most important consequence of our hearings will be to reveal the true circumstances of these meetings so that the American people can be satisfied in the knowledge of what truly took place.

I have had the opportunity to look over many of the documents and materials that have been forwarded to the Committee by the Independent Counsel and White House staff. I would like to make some preliminary comments to help frame Mr. Cutler's testimony. In regard to the tragic death of Vincent Foster, I have read the Independent Counsel's report

carefully and it should put to rest the outrageous and unsubstantiated allegations that this was anything but the suicide of a depressed and emotionally exhausted individual. This report was thoroughly and expertly conducted by Robert C. Lankler, an investigator out of the Manhattan District Attorney's office with many years of experience with homicide experience. Over 120 people were interviewed, hundreds of documents reviewed and rereviewed, and four experienced forensic pathologists recruited for this effort. There was no evidence found to the contrary of the U.S. Park Police's findings that Mr. Foster took his own life, and there is "no evidence that matters relating to Whitewater, Madison Savings . . . played any role in his death." I ask my colleagues on the other side not to add to the incredible pain that the Foster family has experienced by continuing to pursue this issue any further today or in the future as the Committee performs its oversight duties.

The report on Vincent Foster that was issued on June 30, 1994 was accompanied by a statement of the Independent Counsel regarding the White House meetings between White House and Treasury Department officials. The statement on this aspect of the "Washington" phase of the investigation concludes that there has been no criminal wrongdoing by officials of the Clinton Administration, and that no obstruction of justice took place. The Independent Counsel examined thousands of documents subpoenaed from the White House and Treasury Department and found that no one acted with the intent to corruptly influence an RTC investigation. These findings are very meaningful, but many important questions remain to be answered. Although no criminal or ethical violations have been found, the meetings that took place involved, at a minimum, very poor judgment on the part of several individuals. Bad judgment is to some degree unacceptable for matters of this importance and should not go without reproval. At the same time, poor judgment can be an understandable phenomenon and we should be careful not to overreact.

Mr. Chairman, before we embark on this inquiry I would like to voice a few final concerns. Over the next few weeks, there may be many accusations that the scope of these hearings is being unfairly limited, that insufficient time is being provided for the questioning of witnesses, and that Congressional oversight of this matter is being intentionally obstructed. Partisan motives will be pervasive throughout this inquest. I would like to point out that at every step of the way during the past year, my democratic colleagues and I have been calling for a full investigation of the Whitewater matter. I publicly supported an independent Justice Department investigation as controversy about Whitewater grew, and I have backed every House resolution calling for congressional hearings on this matter. I have supported the efforts of the Chairman to be as inclusive as possible, and have respected

the rights of the Minority for a full day of hearings. Despite these actions, the partisan criticism will likely continue.

I believe that it is essential that the Committee do its best to remain above partisan politics, because it is of the utmost importance that this Committee does not undertake actions that undermine the investigation of the Independent Counsel. Mr. Fiske is conducting a criminal investigation, and has specifically requested Congress not interfere with his efforts. We must respect that request, because we know from past experience that congressional interference can lead to the overturning of felony convictions against of high-level government officials. The House resolution specifically states that, "the hearings should be structured and sequenced in such a manner in the judgment of the Leaders that they would not interfere with the ongoing investigation of Special Counsel Robert B. Fiske, Jr." Justice will be best served by respecting the request of Mr. Fiske to confine our questions to that part of his investigation that has been completed to date. I am confident that my colleagues will have every opportunity to raise their concerns on issues outside the scope of this week's hearings as the independent investigation proceeds at a rapid pace.

Mr. Chairman, I look forward to your strong leadership of this Committee during the next several weeks, and want to thank Mr. Cutler for appearing before us today to announce the results of his internal ethics investigation.

OPENING REMARKS OF HONORABLE MARGE ROUKEMA
 WHITEWATER HEARINGS

Mr. Chairman, I want to welcome our witness, Mr. Cutler, here today.

Today, the Committee begins its long awaited investigation into the circumstances surrounding the collapse of the Madison Guarantee Savings and Loan and the relationships between that failure and the Whitewater Development Corporation and the possible involvement of the President.

Now, Mr. Cutler, I do not envy your role here today. After all you were not part of the original White House/Treasury fiasco but you are here today to help clean up the mess.

I must say, I am a little concerned about the somewhat casual attitude you have taken about the highly questionable circumstances involving the handling of the contacts between the White House staff and officials at the Treasury Department or even the RTC.

Your comments Sunday on television that part of these indiscretions can be attributed to the "heat of the moment" are just not acceptable.

And while you may shrug and say, as you have, that every White House "has a helter-skelter quality to it", the American people would be shockingly sad to know that somehow the White House staff resembles kids running a school yard rather than, rather than adults running the nation.

The hearing today is about accountability. You are correct in saying that "regrettable errors of judgement" took place. But that is not enough. We aren't just talking about the one or two phone conversations about the RTC criminal referrals. We are talking about well over 20 or 30 contacts.

There is no mystery about the fundamentals at issue here with respect to Mr. Altman in his capacity as CEO of the RTC.

If there was no problem, why so many contacts? I am afraid the record seems to suggest that something was very much amiss.

Have we not learned our lessons by now.

The American people want to believe and demand that the President fill his White House staff and Administration with competent professionals and not some ill-informed country bumpkins. For you to dismiss this problem as one caused by the fact that "in the White House, everybody is new... and that there are no jurisdictional lines" is in itself arrogant and shows the decline in standards and professionalism being taken here.

How can someone in your position, as the White House Counsel suggest, as you did Sunday, that instructions and directives issued by the White House Counsel to the staff is akin to the observance of the 55-mile per hour speed limit - some follow it, some don't.

These individuals in the White House as well as those political appointees in Treasury and elsewhere are professionals. They know the responsibilities they are taking on when they accept their appointments

and they should know the code-of-conduct expected of people in those positions.

In my opinion, the Administration should move immediately to reestablish the credibility and integrity of both the White House staff and the Treasury Department by starting right at the top with Mr. Altman.

In light of the disclosures today regarding Mr. Altman's actions, his selective amnesia and his role in the affair involving Navy Secretary Dalton, if true, should be enough for Mr. Altman to consider resigning immediately.

While, as the New York Time editorial today stated, independent counsel Fiske has concluded that Mr. Altman did nothing illegal, there could hardly be a clearer example of unethical conflict of interest.

Your comments Sunday that the issue of whether Mr. Altman mislead, or worse yet, deliberately lied to the Congress is between Mr. Altman and Congress to reconcile, suggests that somehow the White House doesn't really care what Mr. Altman did.

Is the White House not concerned that the number two man at treasury may have deliberately misled Congress?

Is this the arrogance with which this Administration is going to proceed. Does this Administration intend to continue to employ such individuals in such high positions in the government based on how one recollects or reconstructs his or her own lapses of memory.

The circumstances surrounding Mr. Altman's involvement in the issue of the criminal referrals, contacts with the White House staff, and the on-going investigation of the failure of Madison Guaranty, and the references today to the Dalton investigation, are highly questionable and cause for a serious review of his continued employment.

These hearings for the next several days are about breaches of ethics, government integrity, accountability, and even political cover-up.

Your role, as counselor to the President, in all of this is to root out those circumstances which caused these questions to arise and to advise the President on whether he should rid the White House or the Administration of those who have brought these questions to the doorstep of the White House.

Hiding behind the Fiske investigation that nothing was done by staff to warrant further investigation or action is not acceptable.

So my question to you Mr. Cytler is will you recommend to the President that Mr. Altman resign?

Whitewater Disinformation

NY TIMES
JULY 26, 1994

As the President's lawyer, Lloyd Cutler has a right to divert attention from his client as the Whitewater hearings commence. But Congress and the public need to understand that Mr. Cutler was misrepresenting both the factual terrain and the importance of those hearings in his Sunday talk show appearance.

First, he argued that it was of incidental importance that President and Mrs. Clinton "happened to be" equal partners with James McDougal in the Whitewater Development Corporation. Mr. Cutler maintained that whatever the problems of Mr. McDougal and his failed savings and loan, they had nothing to do with the Clintons.

Wrong. One of the unanswered questions involving Whitewater arises from the imbalance between Mr. MacDougal's contribution and the Clintons'. As the public record now stands, the Clintons claim losses of \$47,000; Mr. McDougal's losses were about twice that, even though they were equal partners. Was someone putting money into Whitewater on behalf of the Clintons and if so, did that person report it as income?

Mr. Cutler also glibly asserted that the Clintons' involvement with Madison Guaranty Savings and Loan was "peripheral" and added that the couple simply "wouldn't have known" whether Mr. McDougal was misusing Madison's funds to prop up Whitewater. It is possible that if Mr. McDougal engaged in such shenanigans, he did so without telling his partners. But at least one Resolution Trust Corporation investigator has said publicly that she finds it hard to believe that the Clintons never even tried to find out who was paying off their debts. Mr. Cutler seems also to have forgotten that Mrs. Clinton once represented Madison.

But the issue at today's hearings is not whether the Clintons have told the truth about their invest-

ments. That is now in the hands of the special prosecutor. The hearings will focus on whether White House and Treasury officials have told the truth about an apparent effort to block an R.T.C. investigation of Madison. Mr. Cutler said contacts between Treasury and the White House were "regrettable" but innocuous.

The changing stories of the participants show they were not innocuous. Deputy Treasury Secretary Roger Altman, for example, was serving as the acting head of the R.T.C., which is supposed to be politically independent, at the same time that he was talking with Mrs. Clinton about how to avoid further investigations. "This boil must be lanced," he wrote in his diary. Robert Fiske, the independent counsel, has concluded that Mr. Altman did nothing illegal, but there could hardly be a clearer example of unethical conflict of interest.

And contrary to earlier accounts, it appears that Treasury Secretary Lloyd Bentsen was briefed on his department's meetings with White House aides eager to stop the inquiry. Contrary to Mr. Clinton's earlier statements, it now seems that he too knew of these improper discussions.

The White House insists there is no cover-up. Why quibble over words? Call it a failed effort to thwart a legitimate investigation. Everyone involved is scared now, and no one missed the signal when Mr. Cutler pushed Mr. Altman to the end of the plank with a dismissive comment about his need to restore his credibility. Today's report about Mr. Altman's meddling in another R.T.C. investigation involving Navy Secretary John Dalton seals the case for his dismissal or resignation.

In coming days, other officials will struggle to save themselves. But is there anyone smart and calm enough to remind the Clintons and their clique that it is not too late to tell the whole truth?

OPENING STATEMENT ON THE CONGRESSIONAL INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND MADISON SAVINGS AND LOAN.

OPENING STATEMENT OF HON. TOM RIDGE

Mr. Chairman and my colleagues, I know many Pennsylvanians are watching but they may not understand why we're convened here today. Here's why: if you're from Altoona or Reading or Meadville or somewhere else in Pennsylvania and the Resolution Trust Corporation is pursuing possible legal action relating to you, they do not call you up and introduce themselves and give you advance warning. They don't tell you anything until when and if they decide to pursue the case through the court system.

But if you're someone important in Washington, D.C., if you live on Pennsylvania Avenue, then maybe things work a little differently. Maybe living in Pennsylvania doesn't get you advance warning, but living on Pennsylvania Avenue does.

This Pennsylvanian wants to know.

None of us can take any special joy to be convened here today to examine the facts concerning the Madison Savings and Loan and the subsequent federal government actions relevant to it. The question of alleged abuses of federally-insured institutions generally has been on this committee's agenda for many years now, and we have conducted numerous inquiries into activities of individuals associated with both Democratic and Republican parties.

This is slow, difficult work that generally does not bring a multitude of thanks from anyone. And today's hearing will likely be cast in many circles as nothing more than the grinding of partisan politics. But guarding the integrity of federally insured financial institutions is necessary if we are to maintain public confidence in one of the foundations of Pennsylvania's and America's commerce. Guarding the integrity of federal government operations, particularly those overseeing the insured institutions, is necessary if we are to be effective stewards of the public trust.

The significance of contacts between the White House and the overseers of the Resolution Trust Corporation is that the RTC's investigations are supposed to be kept in strict, strict confidence unless this independent agency is ready to pursue formal action against those being investigated. Why should common Americans play by these rules and yet some distinguished Americans, such as the President, receive "advance warning" about the activity?

We have to determine if the Treasury Secretary, Lloyd Bentsen, and the Deputy Treasury Secretary, Roger Altman, have stated the correct sequence of events on when their department informed the White House of the impending Madison investigation. The Treasury General Counsel, Jean Hanson, has told investigators that the top Treasury officers knew of her early briefings of the White House on

this matter, their subsequent statements to the contrary.

Ms. Hanson has said that Mr. Altman told her to brief White House officials last fall, yet Mr. Altman has told Congress he did not know of these early meetings.

Also, we must investigate whether undue pressure was placed on the Kansas City investigators who were pursuing the question of possible losses to taxpayers caused by the Whitewater Development Corporation. While this phase of the inquiry may have to wait until the Special Counsel has completed more work, I fully expect this committee to resolve the matter before Congress adjourns. I am interested in hearing Ms. Jean Lewis of the Kansas City RTC office state her story.

And I am most concerned with the contacts made by Executive branch advisors--in some cases advisors who came up from campaign backgrounds--intended to influence those career officials who have devoted a lifetime of nonpartisan service to the public good.

Career officials with responsibility for ensuring the soundness and integrity of insured institutions must be allowed to do their jobs free of crass political interference. I expect these hearings to explore these contacts in minute detail.

While we have had numerous investigations into alleged abuses of insured institutions, this is the first such investigation with one-party control of both the executive and legislative branches. And this single-party control has resulted in a very slow process of discovery and illumination.

The general attitude of the majority party has been that the minority Republican party can make no genuine inquiry due to its status as a minority party, pure and simple. We can be outvoted and outmaneuvered, and so we shall--no matter how high the ethical stakes, no matter how important the questions of public integrity and trust. We have no status, we shall make no inquiry, and the Congress shall do no effective oversight.

My colleagues, let me pass along some advice given by President Thomas Jefferson at his first inaugural address in 1801. The United States has just seen, for the first time, the rise of rival political parties with competing goals and objectives. The era of George Washington's Federalists with their near-unanimous backing had passed.

Noting the new arrangement of competing political parties that nonetheless had to govern and protect the Constitution and the founding principles, Mr. Jefferson proceeded to speak of the need for the nation's citizens to "unite in common efforts for the common good." And he spoke of the need to

"bear this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be

reasonable; that the minority possess their equal rights, which equal law must protect."

"The will of the majority to be rightful must be reasonable." This principle is no less relevant today when the minority has been denied its day of hearings under Rule XI, been limited in access to certain documents, and been refused all access to other documents.

Yes, effective health care legislation is desired, yes, getting federal spending under control is a never-ending task, and yes, a crime bill and a community banking bill are all vital and necessary, and this member has not allowed the Whitewater investigation to delay his work. Further, I note with approval that it has been Mr. Leach's stance that this committee's agenda must proceed without delay--in fact, some say interstate and community development banking passed more quickly because of these hearings.

But we cannot shirk our duty to investigate the facts of Madison and Whitewater and determine their relevance to this committee's oversight responsibility.

Again, our goal today is to protect the integrity of public and private institutions. Nothing more. But certainly nothing less.

My colleagues, I am fully in favor of pushing Congress to complete its entire agenda. But oversight to maintain the integrity of insured financial institutions and the effective federal regulation of these same institutions has never been trivial to me and my constituents, and it is not trivial today.

The meat of the issue goes beyond banks and thrifts to the integrity of our government. No nation can long survive if it loses the confidence of its people. Unfortunately, since the beginning of our Republic, many of our fellow citizens have believed that the rich, the powerful, the well-connected receive more favorable treatment from their government than average citizens. Accordingly, I would suggest that one of the real reasons we are here today is to assure our fellow citizens that we will not tolerate a situation whereby there is one set of rules for the powerful and another for the little guy on Main Street.

Our responsibility here is to assure our citizens that if there has been wrongdoing, we will expose it; that if certain individuals have broken the law or violated the public trust, we will insist appropriate action be taken against them; and that if our fellow citizens' expectation of fair and equitable treatment for all has been diminished, we will see it restored.

Thank you.

OPENING STATEMENT

REPRESENTATIVE TOBY ROTH (R-WI)

HOUSE BANKING COMMITTEE

JULY 26, 1994

WHAT THIS HEARING NEEDS IS A LITTLE PLAIN TALK.

WE HAVE AN S&L IN ARKANSAS THAT WENT BANKRUPT.

IT COST THE TAXPAYERS \$60 MILLION TO CLEAN UP.

FEDERAL REGULATORS SUSPECT THAT CRIMINAL ACTS

CONTRIBUTED TO THE FAILURE.

THE S&L IS LINKED TO A LAND DEVELOPMENT COMPANY

CALLED WHITEWATER -- AND THE CLINTONS.

HUNDREDS OF THOUSANDS OF DOLLARS ARE MISSING

FROM THE S&L.

AN INVESTIGATION BEGINS, AND LO AND BEHOLD, THE

CLINTON'S NAMES SHOW UP IN THE INVESTIGATOR'S

REPORT.

BACK IN WASHINGTON, ALL HELL BREAKS LOOSE.

WHITE HOUSE AND TREASURY OFFICIALS HAVE MORE
THAN 20 MEETINGS ON THIS ONE S&L CASE.

THE NEWS LEAKS OUT.

EVERYBODY HIRES LAWYERS.

AN INDEPENDENT PROSECUTOR IS NAMED.

SOME OF US IN CONGRESS PUSH FOR OUR OWN
INVESTIGATION, BECAUSE TO PUT IT SIMPLY, THIS THING
SMELLS TO HIGH HEAVEN.

WE'VE SEEN IT ALL BEFORE.

NOW WE HAVE THIS HEARING -- BUT THE DEMOCRATS
SET GROUND RULES THAT PREVENT US FROM ASKING
THE BIG QUESTIONS.

IF THESE GROUND RULES APPLIED TO THE O.J. SIMPSON TRIAL, YOU COULDN'T ASK ABOUT THE KNIFE, THE GLOVE OR THE BLOOD.

UNDER THESE GROUND RULES, ALL YOU COULD ASK IS:

"SO O.J., HOW WAS THE FLIGHT TO CHICAGO?"

IF NIXON HAD THESE GROUND RULES, HE'D HAVE SERVED TWO FULL TERMS.

THE HEART OF THE MATTER IS, IT LOOKS AS THOUGH THE CLINTON WHITE HOUSE TRIED TO KILL THE INVESTIGATION OF THIS S&L, BECAUSE THE CLINTONS' NAMES TURNED UP. WHY?

WE WANT TO QUESTION THE KEY PEOPLE INVOLVED, BUT WHO DO WE HAVE HERE TODAY?

THE PRESIDENT'S COUNSEL,

ONE OF THE SMOOTHEST OPERATORS IN WASHINGTON.

NO ONE WILL BE SURPRISED WHEN HE TELLS US THAT

NOTHING IS WRONG.

THAT'S LIKE THE NORTH KOREANS SAYING:

"BOMB? WHAT NUCLEAR BOMB?"

I DON'T HOLD IT AGAINST MR. CUTLER -- THAT'S HIS

JOB, JUST LIKE O.J.'S LAWYER.

BUT LET ME PUT IT PLAIN AND STRAIGHT:

I DON'T BELIEVE IT.

AND WHEN THE TRUTH COMES OUT, I'M AFRAID MR.

CUTLER WILL REGRET HIS ROLE HERE TODAY.

STATEMENT BY THE HONORABLE JIM NUSSLE
BEFORE THE HOUSE BANKING COMMITTEE

July 26, 1994

I believe that the purpose of these hearings is to promote and protect the principles of open government, full disclosure and accountability. I am here today to try to learn the facts surrounding the failed Madison Guaranty Savings and Loan and the now-defunct Whitewater Development Corporation. I hope these hearings will address remaining questions as to the actions taken by Administration officials during the ongoing investigation into Madison and Whitewater. Only when all of the facts have come to light can we make a judgement about the appropriateness of the actions of those involved with the investigation.

President Lincoln once said that ours is a government of the people, by the people and for the people. I believe this is still true today, and as such, the actions of those who are a part of the government should be open to the people. And I would hope that my colleagues and those who are to testify at these hearings would agree.

The House Banking Committee has a responsibility to provide oversight of our nation's financial institutions and the government agencies that regulate those institutions. If the actions of public and private officials involved in this matter were appropriate, the testimony which we will hear and the facts we will learn during these hearings should exonerate those involved.

CRAIG THOMAS
WYOMING, AT LARGE

Congress of the United States
House of Representatives
Washington, DC 20515

OPENING STATEMENT OF CONGRESSMAN CRAIG THOMAS
HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
HEARING ON WHITWATER RELATED ISSUES
JULY 26, 1994

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MR. CHAIRMAN:

I WANT TO WELCOME MR. CUTLER TO TODAY'S HEARING. HIS REPUTATION AS A LAWYER OF INTEGRITY AND GREAT ABILITY ARE WELL KNOWN, AND I LOOK FORWARD TO EXAMINING HIS INTERNAL REPORT AT THE EARLIEST POSSIBLE TIME. IT'S ALSO IMPORTANT TO NOTE AT THE OUTSET THAT MR. CUTLER WASN'T PERSONALLY INVOLVED IN THE ISSUES BEFORE US TODAY. MR. CUTLER WAS BROUGHT ON BOARD AFTER WHITWATER BECAME A POLITICAL AND PUBLIC RELATIONS PROBLEM FOR THE CLINTON ADMINISTRATION. HIS JOB FROM THE START HAS BEEN TO DIFFUSE THE DAMAGE CAUSED BY QUESTIONABLE CONDUCT WITHIN THE ADMINISTRATION. HE'S CERTAINLY BEEN MORE EFFECTIVE AT THAT THAN HIS PREDECESSOR AND I EXPECT WE'LL SEE A FURTHER DEMONSTRATION OF THAT TACTIC TODAY.

DESPITE THE FACT THAT TODAY'S HEARING DOESN'T FEATURE ONE WITNESS WITH PERSONAL KNOWLEDGE OF, OR DIRECT INVOLVEMENT IN, THE NUMEROUS CONTACTS BETWEEN REGULATORY AGENCIES AND THE WHITE HOUSE, I'M PLEASED WE'RE FINALLY MOVING AHEAD WITH OUR CONSTITUTIONAL OVERSIGHT RESPONSIBILITY. THAT RESPONSIBILITY HAS BEEN USED BY THE BANKING COMMITTEE VIGOROUSLY IN THE PAST AND I WAS SURPRISED TO SEE IT IN SUCH SHORT SUPPLY FOR SO LONG IN THIS CASE. THIS ALBEIT PARTIAL HEARING IS LONG OVERDUE.

FUNDAMENTALLY, NO MATTER WHAT IS REVEALED OVER THE NEXT FEW WEEKS, THESE HEARINGS ARE NEEDED TO RESTORE SOME SENSE OF OPENNESS, ACCOUNTABILITY AND HONESTY TO THE FEDERAL GOVERNMENT.

AT THE VERY LEAST, AMERICANS HAVE A RIGHT TO EXPECT THEIR GOVERNMENT TO CONDUCT ITS BUSINESS IN THE OPEN -- IN "FULL VIEW" OF THE AMERICAN PEOPLE. CLEARLY, THAT HASN'T BEEN THE CASE WITH WHITENATER AND THE SURROUNDING ISSUES. IN FACT, THE EXACT OPPOSITE HAS HAPPENED. INSTEAD OF OPENLY SHEDDING LIGHT ON THE PROCESS, DEMOCRATIC LEADERS AND THE ADMINISTRATION HAVE CONTINUOUSLY TRIED TO KEEP THESE ISSUES SHROUDED IN SECRECY. I'M HOPEFUL THAT THE HEARING TODAY WILL FINALLY BEGIN THE LONG PROCESS OF LIFTING THE SHROUD AND LETTING THE SUN SHINE ON WHITENATER.

THE BOTTOM LINE IS THAT NUMEROUS QUESTIONABLE CONTACTS WERE MADE BETWEEN WHITE HOUSE OFFICIALS AND HIGH RANKING STAFF IN THE REGULATORY AGENCIES THAT HAD INITIATED A CRIMINAL REFERRAL NAMING THE PRESIDENT AND FIRST LADY AS POSSIBLE PARTIES TO THE REFERRAL. CLEARLY THERE IS A DOUBLE STANDARD HERE.

I'M RELATIVELY CERTAIN THAT JOHN DOE IN CASPER, WYOMING WOULD NOT HAVE HAD THE LUXURY OF A "HEADS-UP" FROM THE TREASURY DEPARTMENT IF HE WERE CONNECTED TO POSSIBLE CRIMINAL WRONG-DOING IN A SIMILAR CASE. THIS ACTION BY FEDERAL AUTHORITIES CERTAINLY SMELLS LIKE PREFERENTIAL TREATMENT, WHICH WOULD SEEM TO BREAK BOTH THE STANDARDS OF ETHICAL CONDUCT AND THE WHITE HOUSE ETHICS POLICY.

WHILE THE ADMINISTRATION WAS RESISTING FULL DISCLOSURE OF THESE ACTIVITIES, THEY RECEIVED PLENTY OF HELP FROM CONGRESSIONAL

DEMOCRATS. THE EXTENT THAT THE LEADERSHIP OF THE BANKING COMMITTEE HAS GONE TO PREVENT HEARINGS HAS BEEN ASTONISHING, AS WELL AS UNPRECEDENTED.

THE CHAIRMAN OF THE BANKING COMMITTEE, WHO STOOD ON THE FLOOR OF THE HOUSE TWO YEARS AGO AND REPEATEDLY INSERTED CLASSIFIED DOCUMENTS INTO THE PUBLIC RECORD, HAS NOW INSTITUTED A MAZE OF REGULATIONS SURROUNDING THE ACCESS OF DOCUMENTS IN THIS CASE -- DOCUMENTS THAT AREN'T EVEN CLASSIFIED. THE RESTRICTIONS PLACED ON BANKING COMMITTEE MEMBERS AND STAFF FOR ACCESS TO PHONE LOGS AND MEETING NOTES ARE MORE STRICT THAN THOSE SURROUNDING THE IRAN-CONTRA HEARINGS, WHICH DEALT WITH CLASSIFIED NATIONAL SECURITY MATTERS.

IN ADDITION TO THE DOUBLE STANDARD DEMONSTRATED BY THE RESTRICTIONS ON DOCUMENTS, THE DEMOCRATIC LEADERSHIP OF THIS COMMITTEE TOOK THE UNUSUAL POSITION OF ACTUALLY WRITING TO FEDERAL AGENCIES AND INSTRUCTING THEM NOT TO PROVIDE DOCUMENTS TO A MEMBER OF CONGRESS AND INSTRUCTING POTENTIAL WITNESSES NOT TO ANSWER QUESTIONS THAT MIGHT BE ASKED DURING A FUTURE HEARING.

FINALLY, WHEN THE STONEWALLING DIDN'T WORK, THE DEMOCRATIC LEADERSHIP OF THE BANKING COMMITTEE RESORTED TO DESPERATE CHARACTER ASSASSINATION, ATTACKING THE INTEGRITY OF ONE OF THE MOST HIGHLY RESPECTED AND ETHICAL MEMBERS OF THE HOUSE OF REPRESENTATIVES. THIS DESPERATE ATTEMPT WAS DISMISSED OUT OF HAND BY THE ETHICS COMMITTEE, BUT THE FACT THAT SUCH A BLATANTLY PARTISAN, OBVIOUSLY MANUFACTURED CHARGE WAS EVEN RAISED WAS AN EMBARRASSMENT TO THE ENTIRE BANKING COMMITTEE.

THOSE SAME FOLKS WHO HAVE WORKED SO HARD AT PREVENTING FULL

DISCLOSURE OF THE FACTS SURROUNDING WHITEWATER HAVE AT TIMES CLAIMED THIS PROCESS IS REPUBLICAN GRANDSTANDING. NOTHING COULD BE FURTHER FROM THE TRUTH. WHAT REPUBLICANS SEEK, AND THE AMERICAN PEOPLE DEMAND, IS OPEN AND ACCOUNTABLE GOVERNMENT. NO ONE SHOULD BE AFRAID OF A LITTLE SUNSHINE. IF THE ADMINISTRATION HAS DONE NOTHING WRONG AND HAS NOTHING TO HIDE, THEN THESE HEARINGS WILL BE COMPLETED FAIRLY QUICKLY. OUR FRIENDS ON THE OTHER SIDE OF THE AISLE NEED TO BE REMINDED THAT WERE IT NOT FOR REPUBLICANS PUSHING FOR HEARINGS IN THE SENATE WE MAY HAVE NEVER KNOWN ABOUT THE IMPROPER CONTACTS BETWEEN THE RTC AND THE WHITE HOUSE. WHO KNOWS WHAT ISSUES REMAIN TO BE DISCOVERED.

WHITE HOUSE COUNSEL LLOYD CUTLER RESPONDED TO A QUOTE FROM FORMER CHIEF OF STAFF MACK MCLARTY STATING THE WHITE HOUSE, "HAD PROCEDURES PUT IN PLACE TO ENSURE THAT WHITE HOUSE PEOPLE MAINTAIN THE HIGHEST ETHICAL STANDARDS." MR. CUTLER SAID THE PROBLEM WAS, "THEY JUST TENDED TO GET IGNORED IN THE PRESSURE OF TIME." WHETHER THEY WERE IGNORED IN THE PRESSURE OF TIME OR CIRCUMVENTED DUE TO THE PRESSURE OF POLITICS, ETHICAL STANDARDS WERE COMPROMISED AND IT'S OUR RESPONSIBILITY TO FULLY INVESTIGATE THIS PROCESS, EXPOSE THE TRUTH FOR THE AMERICAN PEOPLE AND RETURN A LITTLE OPENNESS TO THE FEDERAL GOVERNMENT.

WHITEWATER OPENING STATEMENT FOR MR. SAM JOHNSON

TUESDAY, JULY 26, 1994

9:30 AM

MR. CHAIRMAN

THIS MORNING'S HEARING IS THE BEGINNING OF WHAT I FEEL IS THE NECESSARY PROCESS OF CONGRESSIONAL OVERSIGHT INTO ADMINISTRATION IMPROPRIETIES. BUT, I MUST STRESS, THIS IS ONLY A BEGINNING.

MR. CHAIRMAN, FIRST I WOULD LIKE TO THANK YOU FOR LISTENING TO BOTH REPUBLICAN AND DEMOCRATIC MEMBERS ALIKE IN THEIR EXPRESSION OF THESE ISSUES. I LOOK FORWARD TO THE TESTIMONY OF MR. CUTLER AND ALL FORTHCOMING WITNESSES SO THAT NOT ONLY CONGRESS BUT THE AMERICAN PUBLIC AS WELL HAS THE OPPORTUNITY TO FIND ANSWERS TO SO MANY OF THE QUESTIONS WHICH HAVE BEEN RAISED DURING THE DEBATE OVER AFFAIRS LINKED TO WHITEWATER. AMERICA NEEDS TO KNOW.

MR. CHAIRMAN, THE HEARINGS WE BEGIN TODAY AND THOSE THAT WE WILL HOLD THROUGHOUT THE COMING WEEKS ARE ONLY A SMALL PORTION OF THE REAL ISSUE. QUESTIONS THAT HAVE BEEN ASKED AND NOT COMPLETELY ANSWERED SINCE WHITEWATER CAME INTO THE NATIONAL LIMELIGHT, INVOLVE THE QUESTIONABLE BEHAVIOR OF HIGH-RANKING OFFICIALS OF THE U.S. GOVERNMENT. IT IS OUR NATURAL INCLINATION AND RESPONSIBILITY TO FIND ANSWERS TO THESE QUESTIONS.

IT IS THE DUTY OF THE CONGRESS TO HOLD CONGRESSIONAL OVERSIGHT HEARINGS, WHETHER IT IS A HIGH PROFILE CASE INVOLVING HIGH-RANKING INDIVIDUALS OR NOT. AN ISSUE SUCH AS WHITEWATER INVOLVES THE VERY INTEGRITY OF THE AMERICAN GOVERNMENT, AND THE PUBLIC HAS EVERY RIGHT TO KNOW ALL THE FACTS. UNFORTUNATELY, AS IS THE CASE WITH THE RTC OVERSIGHT HEARINGS WHICH HAVE BEEN POSTPONED BY THIS COMMITTEE THREE TIMES, POLITICAL CONCERNS SOMETIMES STIFLE THE BUSINESS OF THE DAY. THIS TYPE OF STALLING MUST STOP.

WE, AS PUBLICLY ELECTED REPRESENTATIVES, ARE ENTRUSTED WITH THE DUTY OF UPHOLDING OUR RESPONSIBILITIES OF OFFICE. IN FACT WE ARE REQUIRED BY LAW TO HOLD CONGRESSIONAL OVERSIGHT HEARINGS ON ISSUES SUCH AS THESE. WE MUST PRESERVE THIS DUTY WHETHER THE HEARINGS AND THE POSSIBLE CONSEQUENCES COMPROMISE OUR INDIVIDUAL PARTISAN BELIEFS OR NOT.

WITH THAT IN MIND, I MUST SAY MR. CHAIRMAN, THAT I AM EXTREMELY DISAPPOINTED IN THE LIMITED SCOPE OF OUR SCHEDULED HEARINGS ON WHITEWATER. BY LAW, SPECIAL COUNSEL ROBERT FISKE'S INVESTIGATION HAS NO BEARING ON THE ABILITY OF CONGRESS TO HOLD INVESTIGATIVE HEARINGS. SO I DO NOT UNDERSTAND WHY WE HAVE MET WITH SO MANY OBSTACLES IN OUR ATTEMPTS TO ORGANIZE, CONDUCT AND COMPLETE THOROUGH HEARINGS WITH ALL THE INFORMATION AND WITNESSES THAT ARE NEEDED.

MR. FISKE HAS ONLY COMPLETED THE FIRST PART OF HIS INVESTIGATION DEALING WITH RTC AND WHITE HOUSE CONTACTS AND THE INITIAL PHASES OF THE FOSTER DEATH. THE RTC HAD MADE A CRIMINAL REFERRAL TO THE JUSTICE DEPARTMENT THAT INVOLVED THE WHITE HOUSE. FOR THE VERY REASON THAT IT TOUCHED THIS NATION'S HIGHEST ELECTED OFFICIALS, THE INDIVIDUALS AND INFORMATION RELATED TO THE ISSUE SHOULD HAVE BEEN READILY AND EASILY ACCESSIBLE. ESPECIALLY SINCE THE WHITE HOUSE DENIES ANY WRONG-DOING.

WHY IS IT THEN, MR. CHAIRMAN, THAT AS OF THE MONDAY BEFORE OUR HEARINGS, NO WITNESSES HAD YET BEEN CALLED TO APPEAR BEFORE THIS COMMITTEE? THIS IS JUST ONE EXAMPLE OF WHERE MEMBERS OF CONGRESS HAVE FOUND DIFFICULTY IN GETTING INFORMATION. IF THESE HEARINGS ARE TO BE THIS LIMITED THEN THEY WILL PRODUCE MORE QUESTIONS THAN ANSWERS, AND LEAVE THE AMERICAN PEOPLE WITH DOUBTS ABOUT THE INTEGRITY OF OUR GOVERNMENT AND THE PEOPLE WHO RUN IT.

STATEMENT OF THE HONORABLE JOHN LINDER
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
FIRST STAGE OF WHITEWATER HEARINGS
July 26, 1994

Mr. Chairman,

The Banking Committee convenes today for the first hearing into a group of events which have come to be known as the Whitewater affair, and the characteristic charges of partisan politics continue to be leveled at those of us seeking to find the truth. Had the President's closest advisors not pushed the outer limits of ethical behavior by hindering the Park Police, removing documents, and meeting secretly with independent regulators, we would not be here today. Our motive in calling for these hearings is simply to uncover the truth in a public forum.

Ideally, the Committee would convene today to review all ethical concerns including the multi-million dollar loss caused by the collapse of Madison Guaranty Savings and Loan and its connection to the Whitewater Development Corporation, the sacking of Vince Foster's office files, and all of the unethical contacts. Regrettably, we have not been allowed to inquire into these questionable matters that comprise about 98% of the Whitewater affair. We will not be permitted to focus on these matters today, and this is part of the Whitewater whitewash.

Instead of investigating the financial dealings which occurred in Little Rock when Bill and Hillary Clinton lived in the Governor's mansion, we are investigating the unethical events that occurred rather recently in our nation's capital by current Clinton Administration officials. Our limited focus today is on officials at the highest levels of government who failed to abide by basic standards of conduct and acted with deceit. What we have found is a clear lack of candor.

I believe that the disclosures that will follow in evidence and testimony will reveal that the Executive Branch of the United States Government has shown a pattern of unwillingness to be truthful. All representatives and every person working in the federal government hold positions of public trust because our employers are the American people. Unfortunately, these proceedings may determine that many of these officials have forgotten the responsibilities that come with public service.

Equally disturbing is the fact that this entire matter has brought to light the many roadblocks the Democrat leaders are able to employ to hide the facts from the American people. While it is apparent daily that an unjust situation has been created within Congress itself where power has become far too concentrated and entrenched, it appears that this affliction becomes aggravated when it has the assistance of the Executive Branch.

Every document and every government employee discussed at this hearing has been funded with hard-earned taxpayer dollars. Nevertheless, captivated by power, (i) the government has cancelled mandatory semi-annual RTC oversight hearings, (ii) the Chairman of this Committee has urged this nation's regulatory agencies to withhold documents related to Madison from the Ranking Minority Member, Representative Leach, and (iii) ridiculous document control procedures have been instituted in order to assure that the American people are kept in the dark.

Frankly, we are gathered here today to participate in hearings whose scope is far too narrow and whose procedures are designed to hinder any efforts to shine light upon the truth.

In order for this committee to thoroughly carry out its oversight obligation, not only will we absolutely need to hold additional hearings as Mr. Fiske completes each section of his investigation, but the leadership must also end its continuous attempts to stonewall.

While an effort has been made to paint the Madison/Whitewater investigation as simply partisan politics, the Clinton Administration knows that it is personally responsible for the Banking Committee convening for this hearing. The Administration and the Democrats in Congress would be better served if they stopped blaming others, and merely adopted the old adage, "honesty is the best policy".

Hopefully, at this point, it should be clear to all involved that it is in the best interests of the nation that all the facts are disclosed -- in a public forum -- so that the confidence in our government is restored and legislative issues of importance to our nation receive the attention they deserve. The people need to know if their government has been truthful to them today.

HON. RICK LAZIO
OPENING STATEMENT FOR WHITEWATER HEARINGS
HOUSE BANKING COMMITTEE
JULY 26, 1994

Mr. Chairman, thankfully these hearings have finally arrived. We are only looking at two or three percent of what the public thinks of as the Whitewater scandal. Although the scope of this set of hearings is very narrow, the American people will finally begin to get a look into the Whitewater controversy.

It should not have taken the committee so long to have gotten here. We have been blocked by an Administration that has imposed ridiculous secrecy measures. The requirement that the documents be under a 24 hour armed guard is unprecedented in the history of the Banking Committee and Congress. When the Administration attempted to place such restrictions on Chairman Gonzalez's investigation of HomeFed Federal Savings and Loan, he vigorously defended the authority of the Banking Committee. I hope this defense of jurisdiction is not selective.

No similar secrecy precautions were taken in other Congressional investigations that touched on national security matters. These excessive security measures mean only one thing. The Administration is embarrassed by its behavior and it doesn't want the public to know what happen.

Fortunately through the hard work of the committee staff, we will overcome these nuisances. The Banking Committee has a tradition of refusing to succumb to the demands of the White House. Just as when our Chairman took to the House floor and revealed classified documents on BNL that the previous administration did not want revealed; we will reveal to the American public what this Administration does not want revealed.

The Administration should contemplate the words our esteemed Chairman spoke last week on the House floor. "If the position is so correct by those who fear and oppose that their position is correct and true and valid, why fear talk, any amount of talk?" The Administration should come clean, take its medicine, and get on with running the country.

As we begin our hearings, I want to make a few observations.

In 1992, Bill Clinton was elected President on a platform of change. He vowed to change the status quo and the way business is conducted in Washington. That promise helped him win the highest office in the land.

As a freshman Congressman who ran on a similar platform, I was optimistic about the chances to effect such change. I have been gravely disappointed. Mr. Clinton's track record falls short of his rhetoric. The record of his subordinates falls even

shorter.

Despite the claims made by some, members of the Clinton Administration may have violated ethical rules. 5 CFR Part 2635.101 clearly states the rules applicable to the Department of Treasury and Resolution Trust Corporation employees. "Employees shall not act impartially and not give preferential treatment to any private organization or individual." It is further written that the mere appearance of violating the law or ethical standards is to be avoided. Officials of the White House, the Treasury, and the RTC clearly gave the appearance of giving Bill Clinton preferential treatment.

In addition, I believe there may have been violations of 5 CFR 2635.703 which prohibits the disclosure of nonpublic information to further the private interest of another person. In this case it is Bill Clinton. There is no doubt that the information disclosed was nonpublic and the interest was the interference of the investigation into Madison Guaranty Savings and Loan.

I dispute the testimony of Lloyd Cutler, White House Counsel, that the contacts between White House and Treasury officials were "regrettable" but innocuous. Misstatements to Congress and the public are not merely regrettable. They can be fatal to the confidence the public have in our government. A democracy cannot function without the consent and the confidence

of the governed.

I have attached a copy of a New York Times editorial from July 26, 1994 which further discusses the inaccuracies and lack of candor the White House is spreading through Mr. Cutler.

At first glance it appeared that only Mr. Clinton's subordinates were guilty of misleading the public and bad judgement. However with the recent admission that the President discussed this matter with Comptroller of the Currency Eugene Ludwig, the public now knows that the President himself has had ethical lapses.

While no one, so far, has produced sufficient evidence of criminal activity to prosecute, the actions of Mr. Clinton and his Administration show a lack of respect for the ethical guidelines they imposed to ensure the confidence the American people have in our government. As the New York Times editorialized on July 21, 1994, "The governing assumption seems to be that regulatory and law enforcement agencies exist mainly for the convenience of the President and his staff."

In addition to being by impressed by President Clinton's rhetoric on change, I was also impressed by the Administration's policy regarding funding for the Resolution Trust Corporation ("RTC"). I supported the Administration's bill, the Resolution Trust Corporation Completion Act, which funds the RTC and allows

it to complete its mission. To further this goal, I hosted Deputy Secretary of the Treasury, Roger Altman, for a meeting in the Capitol. At this meeting, Mr. Altman explained to me and my colleagues why the RTC needed to be funded.

Perhaps because of this history, I am extremely mindful of my Constitutional obligation to oversee how the federal government spends the taxpayers' dollars. The Whitewater investigation is about public trust and fiduciary responsibility of our government to its people. It is regrettable that the majority leadership in Congress has obstructed our duty to disclose.

Today's hearing is only the beginning of a long process to investigate the ethical conduct by the Clinton Administration, to investigate what happened to Madison and Whitewater Development Corp., and then act as a Committee to impose remedies to ensure that this episode is not allowed to occur again. I look forward to the facts that will be disclosed.

ROD GRAMS
 8TH DISTRICT, MINNESOTA
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 FINANCE AND URBAN AFFAIRS**
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 HOUSING AND COMMUNITY DEVELOPMENT
 FEDERAL RESERVE SYSTEM, BANKING
 REGULATION AND INSURANCE
 CREDIT CARD AND DEBIT CARDS
**COMMITTEE ON SCIENCE,
 SPACE, AND TECHNOLOGY**
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STATEMENT BY THE HONORABLE ROD GRAMS
BEFORE THE HOUSE BANKING COMMITTEE HEARING ON WHITEWATER

July 26, 1994

Thank you, Mr. Chairman.

Mr. Cutler, thank you for coming today and presenting your testimony.

What we have just witnessed was an impressive presentation by an impressive attorney about a less than impressive client. Unfortunately, that client is the President of the United States and his Administration -- an Administration that he promised would be the most ethical one in American history.

For the next two weeks, we must determine whether this Administration -- in holding White House-Treasury meetings over the Madison investigation -- has met that standard -- or even come close.

We are not here to examine the criminality of such actions -- that has already been done by the Fiske investigation. We are here to determine -- as representatives of the people -- whether the White House-Treasury contacts involved unethical or inappropriate behavior.

And that is just the beginning. This hearing represents only the tip of the Whitewater iceberg.

In fact, the total scope of this hearing covers less than five percent of the whole affair and does not allow us to even begin answering the real questions surrounding Whitewater:

Why did Madison Guaranty fail at taxpayers' expense and how was the President involved?

If this Committee continues to ignore these questions, it does so at its own risk. The American people are fed up with White House antics and Congressional coverups. To push the envelope any further would leave a lasting stain on this body whose public reputation is already at an all-time low.

WHITEWATER HEARINGS
House Banking Committee
OPENING STATEMENT
Rep. Michael N. Castle
July 26, 1994

THANK YOU MR. CHAIRMAN. I APPRECIATE THE OPPORTUNITY FOR THIS COMMITTEE TO FINALLY HAVE A CHANCE TO PUBLICLY QUESTION TOP WHITE HOUSE, TREASURY DEPARTMENT AND RTC OFFICIALS ABOUT THEIR CONTACTS AND KNOWLEDGE OF THE FAILED ARKANSAS SAVINGS AND LOAN, MADISON GUARANTY, THE CLINTON'S FAILED WHITEWATER INVESTMENT, AND ANY IMPROPER, ILLEGAL OR UNETHICAL RELATIONSHIP BETWEEN THE TWO.

HOWEVER, I AM DISMAYED BY THE VERY LIMITED SCOPE OF THESE SO-CALLED WHITEWATER HEARINGS. OVER THE NEXT COUPLE DAYS, WE WILL BARELY BE TOUCHING THE TIP OF THE ICEBERG AS FAR AS PROBING INTO THE WHITEWATER/MADISON GUARANTY AFFAIR. TODAY, WE WILL HAVE THE OPPORTUNITY TO ENGAGE IN A QUESTION AND ANSWER SESSION WITH THE NEW, INTERIM WHITE HOUSE COUNSEL, LLOYD CUTLER, WHO WAS BROUGHT IN TO CLEAN UP THE MESS AND SORT THROUGH THE CLUMSY COVER-UP OF THE QUESTIONABLE CONTACTS AMONG WHITE HOUSE, TREASURY AND RTC OFFICIALS LAST FALL AND EARLIER THIS YEAR.

I DO APPRECIATE MR. CUTLER'S COOPERATION, AND I LOOK FORWARD TO AN OPEN DISCUSSION WITH HIM TO CLEAR UP THE CONFUSION AMONG MEMBERS OF CONGRESS AND THE AMERICAN PEOPLE THAT HAS BEEN CREATED BY THE WHITE HOUSE HANDLING OF THE WHITEWATER AFFAIR. HOWEVER, THE FACT REMAINS THAT MR. CUTLER WAS NOT A PARTICIPANT IN ANY OF THE ISSUES RELATED TO WHITEWATER. INDEED, QUESTIONING MR. CUTLER ABOUT WHITE HOUSE, TREASURY, RTC CONTACTS ABOUT THE MADISON CRIMINAL REFERRALS IS LIKE QUESTIONING THE OTHER SIDE'S LAWYER.

Michael N. Castle
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INSTEAD, WE NEED TO BE CROSS-EXAMINING THE TRUE PARTICIPANTS INVOLVED -- UNDER OATH, AND WITH AMPLE TIME FOR FOLLOW-UP QUESTIONS.

THERE ARE MANY MORE QUESTIONS WE, AS THE HOUSE COMMITTEE WITH CONSTITUTIONAL OVERSIGHT RESPONSIBILITY OVER THESE MATTERS, HAVE THE AUTHORITY, EVEN THE OBLIGATION, TO ASK. WAS THE RTC'S INVESTIGATION INTO MADISON IMPROPERLY IMPEDED BY CLINTON ADMINISTRATION OFFICIALS? DID MADISON IMPROPERLY FUNNEL FUNDS INTO WHITEWATER OR MR. CLINTON'S GUBERNATORIAL REELECTION CAMPAIGN IN 1984? WHEN DID PRESIDENT AND MRS. CLINTON LEARN ABOUT THE CRIMINAL REFERRALS MADE ON MADISON TO THE DEPARTMENT OF JUSTICE AND DID THEY IMPROPERLY ALERT OTHERS ABOUT THIS NON-PUBLIC INFORMATION? DID WHITEWATER CONTRIBUTE TO THE FAILURE OF MADISON GUARANTY, AS SOME RTC OFFICIALS CONTEND, WHICH COST THE AMERICAN TAXPAYERS \$60 MILLION TO BAILOUT? WHEN THE CLINTON'S INVOLVEMENT IN WHITEWATER WAS EXPOSED IN THE PRESS, WHY THE COVER-UP AND ALLEGED DOCUMENT SHREDDING?

POSSIBLE WHITE HOUSE INTERFERENCES WITH FEDERAL AGENCIES, COVER-UPS TO THWART CONGRESSIONAL INQUIRIES, AND THE HELTER-SKELTER, QUESTIONABLE CONTACTS AMONG FEDERAL AGENCIES ABOUT A POTENTIAL CRIMINAL MATTER IS A DANGEROUS WAY TO GOVERN.

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I AM ALSO DISTURBED BY THE OVERLY SECRETIVE NATURE OF THESE HEARINGS. THE ARMED GUARD IS EXCESSIVE AND THE HEAVILY REDACTED DOCUMENTS BEG THE QUESTION OF WHAT THE CLINTON ADMINISTRATION IS TRYING TO HIDE -- ESPECIALLY SINCE THERE ARE CLEARLY NO NATIONAL SECURITY SECRETS AT STAKE HERE.

HAVING SAID THIS, I HOPE WE CAN ENGAGE IN A FRANK DISCUSSION ABOUT OVER THE NEXT COUPLE DAYS ABOUT THE WHITE HOUSE, TREASURY, RTC CONTACTS REGARDING WHITEWATER AND MADISON GUARANTY SO THAT THE AMERICAN PEOPLE CAN GET A BETTER PICTURE OF HOW THEIR GOVERNMENT IS OPERATING.

TESTIMONY OF LLOYD N. CUTLER
Before the
U.S. House of Representatives
Committee on Banking, Finance and Urban Affairs

July 26, 1994

Mr. Chairman and Members of the Committee,

My name is Lloyd Cutler. Since March 10, I have been Special Counsel to the President. Since the beginning of April, when Mr. Bernard Nussbaum's resignation became effective, I have been performing the duties of Counsel to the President. I had previously held this position under President Carter, and in 1989 I was a member of President Bush's Commission on Federal Ethics Law Reform.

I am here today to present the White House position on the ethical propriety of certain White House contacts with Treasury officials concerning the Resolution Trust Corporation's inquiries into a failed savings and loan called Madison Guaranty.

President Clinton has directed me and the White House staff to cooperate fully and openly both with the investigation of Independent Counsel Robert Fiske and with the oversight Committees of the Congress. We have done so. No White House staff witness has refused to appear. We have produced thousands of pages of documents requested by the Committees. We appreciate the Chairman's statement that we have cooperated fully. We recognize the right of Congress to conduct this inquiry, and we take it very seriously.

In our system, the President and Congress must cooperate on smaller as well as larger matters. We are opening these Madison Guaranty/Whitewater hearings on the very same day that Prime Minister Rabin of Israel and King Hussein of Jordan will address a joint session of Congress, one day after signing the Declaration of Washington with the President as witness, outlining the principles for a treaty of peace between their countries. There could be no more profound demonstration of how diligently the Congress and the President can work together to make the national government as open and productive as we can.

The Treasury-White House Contacts.

As you know, Independent Counsel Robert Fiske has interviewed, deposed or taken before the Grand Jury every Treasury and White House official involved in the so-called Treasury-White House contacts during the period September 1993 through February 1994. These contacts originated in the Fall of 1993, at the time the RTC reportedly made a number of criminal referrals to the Department of Justice of various matters involving a failed S&L called Madison Guaranty. A criminal referral is a recommendation that the Department

consider undertaking an investigation and, if the evidence warrants, bringing a criminal charge against one or more persons; the final decision, of course, is up to the Department. According to press reports, these referrals apparently mentioned, among other matters, a 1978 joint real estate venture called Whitewater between the Chairman of Madison Guaranty (Mr. James McDougal) and President and Mrs. Clinton, as well as some campaign contributions to a Clinton gubernatorial campaign.

As you also know, Mr. Fiske concluded that there was no basis for a criminal prosecution under the ethics laws or other laws as to any of the Treasury or White House officials who took part in these contacts. He expressed no opinion on whether these contacts involved any violation of any non-criminal ethical standards or gave rise to any other concerns. As to the White House staff members, those are the questions Chief of Staff Mack McLarty asked me to review when I returned to the Counsel's Office, and the results of that review are covered in this statement.

In summary, I have concluded there was no violation of any ethical standard, but that it would have been better if some of the issues that arose had been handled differently than they were. I have also recommended measures to assure that future contacts between the White House and executive branch agencies with law enforcement responsibilities will be beyond reasonable challenge.

Before discussing the Treasury-White House contacts and the ethical questions they present, I want to stress that nothing happened as a result of these contacts. No White House staff member made any effort to change any decision by the RTC and no decision by the RTC was changed. These contacts had no impact on the real world of the RTC's activities.

Attached to this statement is a chronology of the Treasury-White House contacts that occurred from September 1993 through February 1994 and the substance of each, so far as I have been able to determine. Where the participants do not substantially agree on what was said, the chronology sets forth the principal differences. For the most part, the differences are the typical variations in recollection of different witnesses to months-old events, and they are not material to the question of whether the contacts were proper.

Let me summarize the main points of this chronology. The contacts generally fall into three time periods. The first set of contacts occurred in the Fall of 1993. They began on September 29, when Treasury General Counsel Jean Hanson took White House Counsel Bernard Nussbaum aside at the end of a meeting on another subject and told him that the Clintons were mentioned incidentally in an RTC criminal referral concerning Madison Guaranty. Ms. Hanson indicated to Mr. Nussbaum that the referral was likely to be the subject of press leaks and inquiries. She said she was informing Mr. Nussbaum so that the White House would not be taken by surprise. Mr. Nussbaum asked Ms. Hanson to be in

touch with his staff if there were further press developments. Over the next few weeks, Ms. Hanson spoke on a couple of occasions to lawyers in the Office of White House Counsel to report the details of continuing press inquiries. Intensifying press interest in the referrals apparently led Mr. Jack DeVore, then Treasury's Assistant Secretary for Public Affairs, to arrange a meeting with White House communications and legal staff to discuss Treasury's response to the press. This meeting occurred on October 14. As far as I have been able to determine, no White House official took any action based on the information received about the referrals other than preparing to respond to press inquiries.

The second set of contacts occurred because of the then-impending expiration (on February 28, 1994) of the statute of limitations for the RTC to file certain potential civil claims arising out of the failure of Madison Guaranty. As you may recall, Senator D'Amato was reminding the Senate daily of the shrinking period during which certain possible civil claims related to the Madison Guaranty failure could be pursued by the RTC, and RTC officials had provided a briefing on this subject to members of Senator D'Amato's staff on January 24. Mr. Roger Altman, the Deputy Secretary of the Treasury and acting CEO of the RTC, sought a meeting with White House officials on February 2 to provide a similar briefing to the White House. Ms. Hanson accompanied Mr. Altman to the meeting. Using talking points prepared by Ms. Hanson, Mr. Altman described the various procedural options available to the RTC for preserving potential claims when the expiration of a statute of limitations was imminent.

At the same meeting, Mr. Altman also raised the issue of his possible recusal from decisions about how to proceed with respect to possible Madison-related claims potentially involving the Clintons. I will refer to this issue in greater detail later in this statement.

The third set of contacts relates to the RTC Oversight Board hearing before the Senate Banking Committee on February 24. By that time, Congress had already passed and the President had promptly signed a law extending the statute of limitations on potential RTC civil claims until December 31, 1995, when the RTC is scheduled to be wound up.

At the hearing, in response to questioning about contacts with the White House related to the Madison matter, Mr. Altman did not mention that he had raised the question of his possible recusal at the February 2 meeting. Mr. Altman also did not mention the September 29 and October 14 meetings regarding press inquiries about criminal referrals. Following the hearing, lawyers from the Office of the White House Counsel and other White House staff met to determine whether Mr. Altman's hearing testimony might require supplementation. As a result, White House Staff Secretary John Podesta telephoned Mr. Altman and expressed concern with Mr. Altman's omission of the fall meetings and of his possible recusal as a subject of discussion at the February 2 meeting.

The day after the hearing, *The New York Times* published a story about White House and Treasury meetings on the Madison investigation. That afternoon, Mr. Joshua Steiner, the Treasury Chief of Staff, reported to Mr. Podesta of the White House staff that Mr. Altman had just informed an editor of *The New York Times* that he had decided to recuse. This news took several at the White House by surprise and led to a series of telephone calls which I will also refer to later in this statement.

The Standards of Ethical Conduct.

The ethical rules applicable to executive branch employees are set forth in the Standards of Ethical Conduct issued by the Office of Government Ethics. Three of the standards are arguably relevant to the Treasury-White House contacts.

(1) A Standard of Conduct provides that an employee shall not participate in a matter without the prior authorization of a designated ethics official if the employee "determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter." 2635.501 and .502. There are two reasons why this standard was not violated. First, in connection with the vast majority of the contacts, no White House official did anything that could be regarded as "participating" in the Madison Guaranty matter before the RTC, or in any other Madison Guaranty matter affecting his or her own personal interests or those of anyone else. Second, whether there may be an appearance of partiality depends in part on whether the employee has certain types of private relationships with persons interested in the matter at issue. President and Mrs. Clinton were arguably interested in some RTC actions concerning Madison Guaranty. But on the basis of my review, none of the White House staff members involved in the contacts has any of the types of financial or family relationships with President or Mrs. Clinton that would raise the issue of partiality. It is not "partiality" for presidential aides to receive information or express opinions relating to the interests of the President for whom they work. For example, a White House staff member could receive information or express opinions about a congressional proposal to raise or lower the salary of the President without violating this standard. There is no other evidence to show that a question concerning the impartiality of any of the staff members should reasonably have arisen.

(2) An executive branch employee may not use his public office for the private gain of himself or his close friend, relative, or private business associate. 2635.702. Stated a slightly different way, he may not use his Government position "in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise," to himself or his close friend, relative, or private business associate. 2635.702(a). On the basis of my review, none of the staff members involved in the contacts sought private gain for himself or anyone else covered by this standard.

(3) Executive branch employees may not use non-public information to further their own private interests or those of anyone else, whatever their relationship with the person. 2635.703. No White House staff member attempted to further anyone's private interests with any non-public information from the Treasury.

Two main ethical issues arise with respect to these events. The first is whether it violated any ethical standard, or was otherwise inappropriate, for the White House to receive a "heads-up" from a Treasury official that the RTC was making criminal referrals that made incidental mention of President and Mrs. Clinton, and thereafter for Treasury and White House officials to discuss how to respond to press leaks and queries about the matter.

The second issue relates to whether it violated any such standard, or was otherwise inappropriate, when Mr. Altman told White House officials he was considering whether he should recuse himself from participation in any Madison Guaranty matter, for White House officials to have given Mr. Altman their views about this subject.

To put these questions of propriety in perspective, one must consider the constitutional structure of the Executive Branch. The Constitution vests the entire executive power in the President alone. Congress has passed various laws redistributing that power within and outside the executive branch, such as the laws purporting to vest power in various Cabinet Secretaries, the laws creating various fully independent agencies like the Federal Reserve Board and the Federal Communications Commission, and the recently revived law creating the office of Independent Counsel. But the Department of the Treasury remains wholly within the Executive Branch, and the RTC is not a fully independent agency in the same sense as the Federal Reserve and the FCC. The RTC acts under the general direction of a chief executive appointed by and answerable to the President, and under the general supervision of an Oversight Board which includes the Secretary of the Treasury and a number of other Executive Branch officers directly or indirectly answerable to the President. In my view the RTC, like the Environmental Protection Agency, is an independent agency within the executive branch.

Of course, the constitutional role of the President as the sole holder of the executive power does not mean that the White House can properly seek to influence executive branch law enforcement investigations involving other high government officials or the President himself. One reason we have an Independent Counsel law is to prevent this from happening. It would of course be inappropriate for the White House to try to influence investigations under that law. But it is entirely appropriate for the White House to receive a heads-up promptly after the Attorney General makes a decision to seek the appointment of an Independent Counsel, so that the White House will not be surprised by press questions. That has been the practice followed ever since the Independent Counsel law was enacted in 1977.

The same principles apply when high officials are directly or indirectly involved in law enforcement investigations within the jurisdiction of other executive branch agencies, such as the Environmental Protection Agency, the Food and Drug Administration, and the RTC. (Strictly speaking, the RTC is not a law enforcement agency, but it can make criminal referrals to the Department of Justice, and it can bring civil actions against directors, officers and borrowers when failed savings and loans are taken over by the government.)

The heads-up principle applies with particular force to criminal referrals by the RTC or other agencies to the Department of Justice. Because of their preliminary nature, it is the usual practice, in fairness to those involved, not to make a public announcement that such a referral has been made. I understand that the RTC and the FDIC have made more than a thousand criminal referrals to the Department, of which only a small percentage have been found meritorious enough to warrant an actual criminal prosecution.

The heads-up received by the White House that the RTC was making criminal referrals concerning Madison Guaranty did not in my opinion involve any impropriety or breach of any ethical standard by any White House official. None of them made any effort to influence the RTC's decision.

On the same reasoning, there was no impropriety or breach of any ethical standard in the meeting requested by Treasury officials and held on October 14, 1993, to discuss press leaks and inquiries to the Treasury concerning the unannounced criminal referrals and the responses to be made to these inquiries. It was obviously important and appropriate for the Treasury to inform the White House about the leaks and resulting press queries so that the White House could prepare itself and brief the Treasury to answer the questions being raised by the press concerning the Clintons' investment in Whitewater and their knowledge as to the campaign contributions raised by Mr. McDougal. In my opinion, those who participated acted in good faith and in compliance with existing ethical standards.

The Office of Government Ethics -- the agency charged with interpreting and applying the Standards of Conduct -- agrees that the receipt of such information by White House officials, if not then used to further their own or another's private interest, does not violate the Standards. On the basis of my review, the information was not used for such a purpose.

Let me now come to the more difficult issue of the contacts about the statute of limitations and Mr. Altman's consideration of his possible recusal, starting with the meeting on February 2. Under the RTC statute, its chief executive is appointed by the President by and with the advice and consent of the Senate. In March 1993, pending the selection of a nominee, the President had named Deputy Secretary of the Treasury Roger Altman to serve simultaneously as acting chief executive of the RTC. Under applicable law, Mr. Altman could only serve as acting chief executive for a maximum of 120 days, expiring during July 1993, unless by that time a nomination had been sent to the Senate for its advice and

consent, in which case he could continue until the nominee took office. In July of 1993, before the 120 days expired, the President nominated Stanley Tate to the RTC post, but he ran into confirmation problems and withdrew on November 30. As a result, Mr. Altman was legally authorized to continue as acting chief executive for 120 additional days after November 30, 1993, i.e. March 30, 1994.

In January 1994, there was increasing congressional interest in the status of potential civil claims relating to Madison Guaranty and Whitewater. At that time, the relevant statute of limitations on such claims was to expire on February 28, 1994, and the RTC had not yet decided whether civil claims relating to Madison Guaranty should be brought. At a meeting requested by Mr. Altman and held with White House staff members on February 2, 1994, Mr. Altman briefed the White House staff on the procedural options available to the RTC in potential cases such as Madison Guaranty where the statute of limitations was about to expire, just as the RTC had previously briefed an interested member of Congress who had inquired about the Madison Guaranty situation.

At the same meeting, Mr. Altman also said he had been considering recusal from participation in any RTC decisions concerning Madison Guaranty, and that he had been advised to recuse by his Treasury colleagues. There is a difference of recollection among the participants as to whether Mr. Altman said he had already decided to recuse or whether he said he was still considering the matter. There is no evidence that White House personnel knew before the meeting started that Mr. Altman would raise the issue of recusal.

Mr. Bernard Nussbaum, then the White House Counsel, expressed his concern, partly because a similar question had been raised in the then pending confirmation hearings of Ms. Ricki Tigert, President Clinton's nominee for Chairman of the FDIC. In her hearing on February 1, Ms. Tigert had been asked to make a blanket recusal in any matter potentially involving President Clinton. She had replied that she would defer any decision on recusal until a particular matter came before her and would then follow the advice of the FDIC ethics officer.

Mr. Nussbaum understood Mr. Altman to say that he had been advised he had no legal or ethical obligation to recuse, but was inclined to do so anyway. Mr. Nussbaum was convinced that an Altman recusal -- in the absence of a legal or ethical requirement to do so -- might undercut the position taken by Ms. Tigert. Mr. Nussbaum expressed his view that a presidential appointee, solely because of her or his status as such, should not recuse merely because the matter tangentially involved the President. Although Mr. Altman said he would leave any Madison Guaranty decision to RTC's career officers in any event, Mr. Nussbaum said he thought these officers could be expected to act with greater fairness and professionalism if Mr. Altman did not recuse. Mr. Nussbaum also made clear that the final decision on recusal was Mr. Altman's to make.

On February 3, Mr. Altman advised the White House that he had decided not to recuse for the time being. He maintained that position until February 25 (a day after his testimony before the Senate Banking Committee) when he announced his recusal.

As you know, the Office of Government Ethics had concurred with the determination of the Treasury and RTC ethics officials in February 1994 that Mr. Altman had no legal obligation to recuse himself from Madison Guaranty-Whitewater matters, and that a decision on whether or not to recuse lay within his personal discretion. The Office of Government Ethics has now also informally confirmed that it has no reason to believe that any White House official violated any ethical standard with respect to the recusal issue.

However, Mr. Nussbaum's statements plainly suggested his preference that Mr. Altman not recuse himself in the circumstances, and Mr. Altman may have so understood him. This may have influenced Mr. Altman's decision on February 3 to defer recusal. Even though this did not in my opinion violate any ethical standard, there is a broader question as to whether it was appropriate for any White House staff member to make this preference known to Mr. Altman.

The answer to that question seems clearer when viewed in hindsight than it may have appeared to be at the time. I am sure that everyone concerned acted in good faith. But in my judgment, this discussion should not have taken place. And once the question was raised, I believe that in the light of all the factual and political circumstances relating to Madison Guaranty and Whitewater, the White House should have encouraged Mr. Altman to recuse.

However, it is important to note that during the period before Mr. Altman recused himself, Mr. Altman did not participate in the RTC decision to make the criminal referrals or any other RTC decision relating to a particular Madison Guaranty/Whitewater matter.

Let me turn briefly to whether it violated any ethical standard for White House officials to receive the February 2 briefing as to RTC's statute of limitations options. This same briefing was being given to various members of Congress, and was public information. It was in the nature of a heads-up to the White House, and no White House participant said anything that could have affected how the RTC exercised its options. Moreover, that issue was mooted ten days later when Congress passed and the President signed the law extending the limitation period until December 31, 1995, or the winding-up of the RTC, whichever comes later. There was no discussion of the merits or substance of any possible claims relating to Madison Guaranty.

There remain the contacts that occurred on February 25, after Mr. Altman's testimony on February 24 and after he announced his decision to recuse on February 25. In the course of a telephone conversation initiated by Mr. George Stephanopoulos, Senior

Advisor to the President, and Mr. Harold Ickes, the White House Deputy Chief of Staff, with Mr. Altman, they expressed their concern that Mr. Altman had informed *The New York Times* of his recusal decision before informing the White House. However, they made no effort to persuade Mr. Altman to change his mind. In this conversation they also expressed their surprise and dismay about reports that the RTC had retained Mr. Jay Stephens and his law firm to investigate and conduct any civil litigation on behalf of the RTC relating to the same allegations as the criminal referrals. (Let me remind you that when Attorney General Janet Reno had replaced Mr. Stephens and other holdover U.S. attorneys earlier in the Clinton administration, Mr. Stephens had strongly criticized the administration, and had later considered running as a Republican candidate for the Senate. It is no exaggeration to say he was a vocal political critic of the President.) In an earlier conversation the same day between Mr. Stephanopoulos and Mr. Joshua Steiner, Secretary Bentsen's Chief of Staff, Mr. Stephanopoulos had also expressed these concerns, and questioned how Mr. Stephens could have been considered impartial and suitable for appointment. Mr. Steiner responded that it was a done deal and should not be pursued further.

In my view, the concerns expressed by Mr. Stephanopoulos and Mr. Ickes were perfectly natural under the circumstances, and involved no ethical impropriety. They made no real effort to alter what had been done, and with respect to Mr. Stephens, Mr. Stephanopoulos was simply "letting off steam." Republican observers like Mr. Marlin Fitzwater (President Bush's press secretary) and Congressman James Leach have also dismissed the incident as trivial. As in the case of the earlier contacts, the contacts concerning the retention of Mr. Stephens had no effect on his status or on the RTC's activities concerning Madison Guaranty.

Let me turn to when the President and Mrs. Clinton learned about the Treasury-White House contacts. Mr. Lindsey informed the President of the criminal referrals early in October, shortly after the initial "heads-up" from Ms. Hanson and after the press had begun inquiring into the matter. Mrs. Clinton learned about it later in October through press reports.

The President and Mrs. Clinton do not recall learning about the discussions concerning Mr. Altman's recusal until Mr. Altman announced it on February 25. Mr. Ickes recalls that at some point he briefly informed the President of the February 2 meeting and Mr. Altman's subsequent decision not to recuse. He does not recall when that discussion took place. Mr. Ickes also recalls a similar brief discussion with Mrs. Clinton.

I also want to refer to the brief conversation between the President and Comptroller of the Currency Eugene Ludwig on December 30, 1993, which does not even deserve to be described as a contact. They were both at Renaissance Weekend in Hilton Head, along with more than a thousand others. They had a brief exchange. Their recollections differ somewhat, but they agree the President said he wanted to have a further talk with Mr.

Ludwig about the Madison Guaranty/Whitewater matter, which was then very much in the news. Mr. Ludwig called Ms. Jean Hanson, the Treasury General Counsel, for guidance. She referred him to the White House Counsel's Office, where he reached Mr. Clifford Sloan. Mr. Sloan called his colleague Mr. Neil Eggleston, who called Deputy White House Counsel Joel Klein, who was also at Renaissance Weekend. Mr. Klein found the President and inquired about the conversation. The President said he had only wanted to get Mr. Ludwig's suggestions as to the names of experts familiar with real estate development and financing who might be willing to write articles explaining the Whitewater project to the public. Mr. Klein said it would be better to obtain such advice from someone other than the Comptroller. The President said he agreed, and would turn elsewhere. Mr. Klein so informed Mr. Ludwig.

Since the President and Mr. Ludwig never had a substantive conversation -- even about the names of experts who could write articles -- their brief encounter is hardly worth mentioning. It could not possibly have violated any applicable ethical standard or be considered a significant error of judgment.

Mr. Chairman, I have said that while the various Treasury-White House contacts violated no ethical standard, in my judgment it would have been better if some of these contacts had never occurred, and if fewer White House staff members had participated. When I reviewed these incidents in their totality, I found there were too many people having too many discussions about too many sensitive matters -- matters which were properly the province of the Office of the White House Counsel. The contacts were not sufficiently channeled between White House Counsel and Treasury Counsel, and there were too many conversations in which no counsel participated. In retrospect, we did not meet as high a performance standard as we should have set for ourselves. We have therefore taken additional measures to assure that future contacts between the White House and executive branch agencies with law enforcement functions will be beyond reasonable challenge.

First, in March 1994 we reminded everyone on the White House staff of the rule that no such contacts relating to a particular law enforcement investigation may be initiated without the prior approval of the White House Counsel. Some of the Treasury-White House contacts were initiated or permitted by White House staff members without the prior approval of the Counsel, even though Counsel's memoranda requiring prior approval have been in effect since February 1993.

Second, as a result of my review, we have concluded that such contacts by staff members other than those in the White House Counsel's Office are inadvisable even with the approval of the White House Counsel, and that in the future all such contacts should be solely between White House Counsel (or Deputy) and the General Counsel (or Deputy) of the agency involved. These are the understandings already in place with the Attorney General and her Deputy, and we plan to extend them to other agencies as well.

Third, we are drafting rules of conduct for future contacts between the Office of the White House Counsel and executive branch agencies with law enforcement functions on particular investigative matters, defining the circumstances under which such contacts are appropriate or not. We will review these drafts with the agencies, and we plan to issue them promptly.

Finally, I want to point out again that none of the Treasury-White House contacts I have described had the slightest effect on the RTC's activities concerning Madison Guaranty to date, and to pledge that no such effects will be tolerated in the future.

The Fiske Report on Mr. Vincent Foster's Death.

With your permission, Mr. Chairman, let me add a word about Mr. Fiske's report on Mr. Vincent Foster's death. Mr. Foster was a childhood friend of the President and admired by numerous members of the White House staff. Although I knew him only slightly, I am told he was hard-working, deeply intelligent, a good colleague, and a treasured member of the White House "family." To the people who knew him, his death was unexpected and devastating. On the day he died, a curtain of sadness descended upon the White House.

On June 30, 1994, Mr. Fiske published a thorough and voluminous report of his findings concerning Mr. Foster's death. I believe that report proves beyond reasonable doubt that Mr. Foster's death was indeed a suicide that occurred in Fort Marcy Park, as originally reported by the Park Police. According to Mr. Fiske, "the evidence overwhelmingly supports this conclusion, and there is no evidence to the contrary."

Mr. Fiske's report also stated that his team "found no evidence that issues involving Whitewater, Madison Guaranty, CMS or other personal legal matters of the President or Mrs. Clinton were a factor in Foster's suicide." Since these Whitewater/Madison Guaranty matters are the main reason for this Committee's hearings, and Mr. Foster's death has been found to be unrelated to these matters, we hope that all members of the Committee will accept Mr. Fiske's report without chasing down every new question that conspiracy theorists will always raise about the violent death of any prominent person.

Even *The Wall Street Journal's* editorial page -- one of Mr. Foster's most persistent critics -- has accepted the findings of the Fiske Report. After a year of lurid, personally invasive and totally unsubstantiated speculations, surely it is time for decent people to leave Mr. Foster's bereaved family in peace.

I had hoped this thorough report would put to rest the wild rumors that Mr. Foster was murdered or committed suicide at another location, and that his dead body was then moved to Fort Marcy, as well as all the other innuendos and speculations that have been

circulated by mere gossips, by irresponsible journalists, and by persons who would harm the President and torment Mr. Foster's family to advance their political goals. It, unfortunately, has not.

So, I would ask those rumormongers to heed the words of Vince Foster's family. In a statement they released seven days ago, the Foster Family wrote: "We love Vince and miss him terribly. He was an honorable man and deserves to be treated with respect. On this anniversary of his death, our fervent hope is that this matter now will recede from public view and that the family will be left alone to deal with its loss in private." That is their wish. Let it be ours, as well.

Thank you, Mr. Chairman and members of the Committee.

ATTACHMENT TO TESTIMONY OF LLOYD N. CUTLER
Before the
U.S. House of Representatives
Committee on Banking, Finance and Urban Affairs

July 26, 1994

Chronology of Contacts Between
the White House and Treasury Officials on the Subject of the
RTC Investigation of Madison Guaranty Savings & Loan

The following is a narrative description of the contacts between White House and Treasury officials in connection with the RTC investigation of Madison Guaranty Savings & Loan. This description is based on an internal review undertaken by the Office of White House Counsel.

Contacts Relating to RTC Criminal Referrals.

On September 29, 1993, Ms. Jean Hanson, General Counsel of the Department of Treasury, participated in a meeting of Treasury officials reporting to Mr. Bernard Nussbaum, Counsel to the President, on the investigation of the Waco matter. After the Waco meeting, Ms. Hanson told Mr. Nussbaum of an RTC criminal referral involving Madison Guaranty that incidentally mentioned the Clintons and the Clinton for Governor Campaign. Ms. Hanson said she was reporting this information to Mr. Nussbaum because she expected press leaks and did not want the White House to be taken by surprise. Ms. Hanson also told Mr. Nussbaum that Mr. Roger Altman, then the acting Chief Executive Officer of the RTC, had previously sent him some materials relating to the subject, but Mr. Nussbaum had no recollection of this. Mr. Nussbaum located a telecopy in his files from Mr. Altman to Mr. Nussbaum on March 24, 1993 of a March 9, 1992 *The New York Times* article, "Clinton Defends Real-Estate Deal." This apparently was the material to which Ms. Hanson was referring, but Mr. Altman does not remember sending it and Mr. Nussbaum does not remember receiving it.

Mr. Nussbaum called Mr. Clifford Sloan, an attorney in the Office of White House Counsel who had attended the Waco meeting, back into his office and asked Ms. Hanson to repeat for him what she had just told Mr. Nussbaum. Mr. Sloan had the impression from Ms. Hanson that the referral already had occurred. Mr. Nussbaum understood it had already been made or was about to be made. Mr. Nussbaum asked Ms. Hanson to call Mr. Sloan if there were further press developments. These conversations with Ms. Hanson were completed in less than five minutes. Either Mr. Nussbaum or Mr. Sloan reported the conversation to Senior Advisor Mr. Bruce Lindsey, who asked only to be kept informed. At

that time, Mr. Lindsey handled press inquiries regarding Arkansas-related matters, such as Whitewater, for the White House.

Ms. Hanson called Mr. Sloan at least twice with more information about the increasingly detailed press inquiries about the referral. Mr. Sloan involved Mr. Neil Eggleston, a new lawyer in the Counsel's Office, in the matter and Mr. Eggleston may have participated with Mr. Sloan in a call from Ms. Hanson on October 7. During the October 7 conversation, Ms. Hanson described the "RTC Early Bird," a circular that reported on press inquiries made to RTC. She said that a recent issue (September 30) described press inquiries made by *The Washington Post* and the *Associated Press* relating to multiple referrals, which Ms. Hanson understood to be concerning Madison Guaranty. Ms. Hanson described some of the inquiries being made by *The Washington Post*.

On October 4 or 5, while traveling with the President, Mr. Lindsey received news from a source outside the government who had helped the Clinton presidential campaign respond to questions about Whitewater that Mr. Jeff Gerth of *The New York Times* and perhaps other reporters had been making inquiries related to the criminal referrals. The reporters were asking about checks written on Madison Guaranty accounts to the Clinton gubernatorial campaign. They indicated these checks were somehow at issue in nine criminal referrals made by the RTC. This information was consistent with what Mr. Lindsey had learned from Mr. Sloan and Mr. Eggleston. Later, Mr. Lindsey told the President about these press inquiries. The President did not ask Mr. Lindsey to do anything and Mr. Lindsey did not suggest there was anything that could or should be done about the criminal referrals.

On October 7, Mr. Sloan and perhaps Mr. Eggleston told Mr. Lindsey about the additional information received from Ms. Hanson. Mr. Lindsey asked whether it was appropriate for the White House to be getting the information that Ms. Hanson was providing. Messrs. Sloan and Eggleston, who had considered this question already, said they had concluded it was, especially because Ms. Hanson was providing information that was coming to her from the press.

Apparently in response to intensifying press interest, on or about October 13, Mr. Jack DeVore, the Treasury Assistant Secretary for Public Affairs, arranged a meeting with White House communications and legal staff to discuss their press response. The meeting took place on October 14 and was attended by Mr. DeVore, Ms. Hanson, Secretary Bentsen's Chief of Staff Mr. Joshua Steiner, Mr. Nussbaum, Mr. Lindsey, White House Communications Director Mr. Mark Gearan, Mr. Eggleston and Mr. Sloan.

At the meeting, Mr. DeVore described the press inquiries they had received over the past several weeks from Ms. Susan Schmidt of *The Washington Post* and Mr. Gerth. Contemporaneous handwritten notes of that meeting taken by Mr. Lindsey and Mr. Gearan confirm that Mr. DeVore described the inquiries in detail. Mr. DeVore indicated that he had spoken with reporters, and that Ms. Schmidt had been to see Ms. Jean Lewis, an RTC

investigator handling the Madison matter out of Kansas City. Mr. DeVore said that Mr. Gerth had asked him to obtain the referral and determine who endorsed four checks identified in the referral that were Clinton gubernatorial campaign contributions drawn on Madison Guaranty S&L accounts. Mr. Lindsey subsequently called the custodians of the campaign contribution records in Little Rock and requested copies of the four checks asked about by Mr. Gerth.

Mr. DeVore reported that Mr. Gerth also wanted to know why the criminal referrals had been sent from the Kansas City RTC office to the RTC in Washington, D.C., rather than directly to the U.S. Attorney's office in Little Rock. He also wanted to know whether the referrals by this time had, in fact, been sent to Little Rock. Mr. DeVore said he wanted to confirm to Mr. Gerth that the referrals had been sent to the U.S. Attorney before Mr. Gerth made his inquiry in order to avoid any inference that the referrals would have been held up in Washington but for his call.

No White House official took any action based on the information discussed during this meeting other than preparing to respond to press inquiries. All of the staff members involved to this point had the clear impression that the referrals already had been accomplished.

On October 31, *The Washington Post* published a detailed story by Ms. Schmidt about the Madison Guaranty criminal referrals. On November 2, *The New York Times* published a detailed story by Mr. Gerth about the referrals. These reports included the same subjects reported by Treasury to White House officials during the preceding period.

Contacts Involving Eugene Ludwig.

On December 30, 1993, Mr. Eugene Ludwig, Comptroller of the Currency and head of the OCC (the agency with principal regulatory authority over national banks), had a brief exchange with the President during the Renaissance Weekend in Hilton Head. Their recollections differ somewhat, but they agree the President said he wanted to have a further talk with Mr. Ludwig about the Madison Guaranty/Whitewater matter. Mr. Ludwig called Ms. Jean Hanson, the Treasury General Counsel, for guidance. She referred him to the White House Counsel's Office. He reached Mr. Sloan at home and told him that he was attending Renaissance Weekend and that the President had mentioned the Madison matter to him. Mr. Ludwig requested material from Mr. Sloan that would educate him about Madison so he could converse with the President on the subject more knowledgeably. Mr. Sloan told Mr. Ludwig that he or someone else from the White House Counsel's Office would call him back. Mr. Ludwig also telephoned Mr. William Kennedy of the Counsel's Office about his conversation with the President. Mr. Kennedy suggested that Mr. Ludwig discuss the matter with Mr. Joel Klein, Deputy White House Counsel, who also was attending Renaissance Weekend.

Mr. Sloan conferred with Mr. Eggleston and they agreed it would be unwise for Mr. Ludwig to have further conversations with the President about the Madison matter. Mr. Eggleston reached Mr. Klein who agreed. Mr. Klein spoke to the President who said that he had intended to ask Mr. Ludwig if he could recommend financial or real estate experts who could review publicly available information about Whitewater and write about it for the press in a way that would take the mystery out of it. The President agreed with Mr. Klein that any conversation with Mr. Ludwig could be misconstrued and that he should have no further conversations about Whitewater with Mr. Ludwig. Mr. Klein later told Mr. Ludwig that he should not pursue further discussions with the President on the subject.

At some later point, Mr. Ludwig telephoned Mr. Nussbaum and mentioned that he had spoken to the President about Whitewater at Renaissance Weekend. Mr. Nussbaum told Mr. Ludwig that he agreed with Mr. Klein that it would be unwise for Mr. Ludwig to have further discussions with the President about the matter. Mr. Nussbaum later mentioned this conversation to the President, who told Mr. Nussbaum he continued to agree that further conversations with Mr. Ludwig should not occur.

Later in January, Mr. Ludwig called Ms. Margaret Williams, Mrs. Clinton's Chief of Staff, to offer his unsolicited advice about how the White House should be handling the Whitewater matter. Ms. Williams listened to Mr. Ludwig, thanked him for sharing his thoughts, and did nothing with his suggestions.

Independent Counsel Deliberations.

During the early part of January 1994, the White House was considering whether, when, and how to ask the Department of Justice for the appointment of an Independent Counsel to carry on the investigation of the criminal referrals that had been made in connection with Madison Guaranty/Whitewater. The President requested the appointment of an Independent Counsel on January 12.

Mr. Altman and Ms. Williams worked together on health care issues. On January 4 or 11, Mr. Altman made a diary entry concerning Ms. Williams' comment to him that press questions about Whitewater were affecting time Mrs. Clinton had available for health care. He also recorded an impression that the White House was trying to negotiate limits on the scope of a putative Independent Counsel's jurisdiction if one were to be appointed by the Attorney General. Mr. Altman confirmed to us that neither Ms. Williams nor anyone else at the White House ever told him or implied that the White House was trying to negotiate such limits. We found no evidence of any such efforts.

Contacts Relating to Statute of Limitations and Mr. Altman's Recusal
Deliberations.

In January 1994, Republican Members of Congress drew attention to the approaching February 28 expiration of the statute of limitations on any potential civil claims that could be brought by the RTC arising out of the failure of Madison Guaranty. In response to Congressional interest, the RTC provided at least one briefing to Congressional staff on the procedural options available to the RTC in the absence of legislation extending the limitations period. During this same period, and in anticipation of the RTC's need to make a decision about how to proceed with the Madison Guaranty claims, Mr. Altman began considering whether he should formally recuse himself from participating in any action relating to Madison Guaranty.

Questions about recusal also arose with the nomination of Ms. Ricki Tigert as Chairman of the FDIC. At her confirmation hearing on February 1, 1994, Ms. Tigert was asked if she would make a blanket recusal as to any matters related to the President. She declined to commit to a blanket recusal, saying she would evaluate the need to recuse on a case-by-case basis.

Mr. Altman sought a meeting with White House officials on February 2 for the purpose of providing the same information related to the statute of limitations issue that the RTC had been providing to the Congress and the press. Mr. Altman said he intended to bring Ms. Hanson to the meeting. The White House participants were Deputy Chief of Staff Mr. Harold Ickes, Mr. Nussbaum, Ms. Williams and Mr. Eggleston, none of whom recalls being aware of the purpose for the meeting before they arrived. Although the meeting was held in Mr. McLarty's office, he did not participate in the meeting.

Mr. Altman spoke from talking points prepared for him by Ms. Hanson. He outlined the procedural options available to the RTC if the statute of limitations for the Madison civil matter was not extended, noting that eight Republican Senators and Congressmen had asked the RTC to seek tolling agreements from the President and Mrs. Clinton. The participants did not discuss the substance or merits of the Madison matter and the White House officials offered no opinions or guidance on how the RTC should handle any potential civil case, including the statute of limitations issue. Ms. Williams inquired whether Mr. Altman intended to provide the same information to the Clintons' private lawyers. (Any decision to be taken on a tolling agreement properly would be made by the individuals involved in consultation with their private lawyers.) Mr. Altman said he assumed so. No White House official made any other inquiries or requests of Mr. Altman related to the statute of limitations issue. No White House official took any action to influence the way in which the RTC considered the procedural options presented by Mr. Altman.

After completing his briefing on the statute of limitations, Mr. Altman raised the subject of his recusal. None of the White House participants in the meeting was aware in advance of the meeting that Mr. Altman would be discussing recusal. Recollections differ as to whether Mr. Altman had decided to recuse himself from Madison-related matters before the February 2 meeting. Mr. Altman told us that he had not done so, and that he had not planned to raise the subject of recusal with the White House at the statute of limitations

meeting on February 2. Ms. Hanson, however, apparently understood that Mr. Altman had made a decision to recuse the preceding day and that he was planning to announce his decision to the White House at the February 2 meeting.

The participants vary in their accounts of whether Mr. Altman actually announced a decision to recuse or said only that he was considering recusal. Ms. Hanson believes that Mr. Altman read the talking point that she had prepared for him, which states "I have decided that I will recuse myself from the decision making process, as interim CEO of the RTC. . . ." Mr. Altman told us that he said "I have been advised to recuse myself and I intend to take that advice." None of the White House participants in the meeting understood Mr. Altman to have announced a decision already made. All White House participants understood Mr. Altman to say he was considering recusal.

Mr. Altman told the group that he had been advised that he had no legal or ethical obligation to recuse. He said, however, that Ms. Hanson and Treasury Secretary Lloyd Bentsen had recommended that he recuse. In any event, he said, it would make no difference because he intended to accept the recommendation of the RTC's Acting Deputy CEO, Mr. Jack Ryan, and RTC General Counsel, Ms. Ellen Kulka, regarding any Madison-related decision that had to be made before the statute of limitations expired. Mr. Altman said that Mr. Ryan and Ms. Kulka had come to the RTC from the Office of Thrift Supervision and that he had confidence in them.

Most participants agree that Mr. Nussbaum was the principal respondent. By his own account, corroborated by others present, Mr. Nussbaum expressed a view that Mr. Altman should certainly recuse if he had a legal or ethical obligation to do so, but he should consider whether he ought to recuse if he did not. Mr. Nussbaum's remarks were motivated by his belief that political appointees have an obligation to serve and should avoid that obligation only if there is a legal or ethical requirement to do so. Mr. Nussbaum also was concerned about developing a precedent in the Clinton Administration for recusals based on nothing more than the fact that the recusing individual was a political appointee of the President. In particular, Mr. Nussbaum was concerned that a decision by Mr. Altman to recuse would undercut the stand taken by Ms. Tigert during her confirmation hearings the previous day.

Mr. Nussbaum also observed to Mr. Altman that even were Mr. Altman to rely on a recommendation from Mr. Ryan and Ms. Kulka, his presence would have a positive effect on the care and professionalism with which they developed their recommendation. Mr. Nussbaum had a prior unfavorable experience on an OTS matter in which Ms. Kulka had been involved.

Mr. Ickes said he did not think Mr. Altman needed to recuse himself because of his relationship with the President, but that recusal was entirely up to Mr. Altman. Ms. Williams asked Mr. Altman why it was necessary to recuse if he planned to accept the staff recommendation anyway.

All of the participants understood, either explicitly or implicitly, that the White House considered that the ultimate decision on recusal was Mr. Altman's, alone, to make. Mr. Altman said he intended to consider the subject further.

Mr. Steiner, who did not attend the February 2 meeting, developed an impression of what had happened by talking to Mr. Altman. On February 12 and again on February 27, Mr. Steiner described the February 2 recusal discussion in his diary, commenting that Mr. Altman was under "intense pressure" by the White House not to recuse and that the White House officials present at the meeting -- Mr. Nussbaum, Mr. Ickes and Ms. Williams -- had told Mr. Altman that recusal was "unacceptable." Notwithstanding these characterizations in his diary, Mr. Steiner told us that he did not understand that the White House applied "intense pressure" to discourage Mr. Altman from recusing and that both that phrase and the term "unacceptable" were his, not Mr. Altman's. Mr. Steiner also told us that he knew only that Mr. Ickes and Ms. Williams were present at the meeting and could not fairly attribute any views to them.

The following day, February 3, Mr. Altman determined that he would not recuse himself from the Madison matter. He reported his decision to each of those who had attended the meeting the day before. After Mr. Altman had informed Mr. Ickes, Ms. Hanson recalls encountering Mr. Ickes, who asked her who was aware of her earlier recommendation to Mr. Altman that he recuse. She also recalls giving several names. Mr. Eggleston recalls hearing this colloquy, but Mr. Ickes does not remember it. Sometime later, Mr. Altman had a brief conversation with Mr. McLarty on the subject. Mr. McLarty recalls that Mr. Altman described himself as still weighing the issue.

At about this same time, Ms. Hanson called Mr. Nussbaum about a letter written to Mr. Altman by Congressman Leach on February 3, asking that Mr. Altman consult ethics officers about recusal. Ms. Hanson said that Treasury was researching the ethics issue. Mr. Nussbaum suggested that Mr. Foreman, Treasury's ethics officer, talk to Ms. Beth Nolan, the White House ethics expert and a lawyer whose judgment he trusted.

After his conversation with Ms. Hanson, Mr. Nussbaum alerted Ms. Nolan that Mr. Foreman would be calling her. Mr. Nussbaum told Ms. Nolan that he had concerns about leaving decision-making to Ms. Kulka if it turned out that Mr. Altman had an ethical obligation to recuse.

Mr. Foreman called Ms. Nolan on or about February 4. They discussed the ethics standards that might apply to a presidential appointee whose recusal was requested by Congress or was otherwise being considered. Mr. Foreman identified three issues he expected to consider: Vacancy Act requirements, legal and ethical standards applicable to any executive branch appointee, and an appearance of impropriety standard.

Ms. Nolan and Mr. Foreman did not discuss how a recusal by Mr. Altman would affect the Madison case. They specifically agreed that they would not discuss the merits of

the Madison case, and observed that neither of them knew anything about the merits. Ms. Nolan agreed that Mr. Foreman was considering the right issues. The call ended with the understanding that Mr. Foreman would call the Office of Government Ethics and the ethics official at the RTC to get assistance in determining whether Mr. Altman had an obligation to recuse. Ms. Nolan declined to participate in Mr. Foreman's follow-up conversations with the Office of Government Ethics and the RTC.

Mr. Foreman called Ms. Nolan again the following week, on or about February 9. Mr. Foreman raised the question whether Ms. Tigert's decision to recuse from any matter affecting the President and Mrs. Clinton, which she had announced the day before, affected any decision with respect to Mr. Altman. Ms. Nolan had no recommendation on the matter. During this conversation, Mr. Foreman told Ms. Nolan that both OGE and the RTC were inclined to conclude that there was no ethical requirement that Mr. Altman recuse and the decision could be left to him.

At some later point, the date of which he does not recall, Mr. Ickes believes that, in the course of discussing a number of subjects, he briefly informed the President of the February 2 meeting and Mr. Altman's subsequent decision not to recuse. He recalls a similar conversation with Mrs. Clinton, on a date he does not recall, and also in the course of discussing a number of subjects. Neither of these conversations lasted much longer than a minute. The President and Mrs. Clinton do not recollect these conversations.

Contacts Relating to the February 24 RTC Oversight Board Hearing.

On February 16, Mr. Steiner stopped by the office of Senior Advisor Mr. George Stephanopoulos to discuss Mr. Steiner's concern that the subject of Mr. Altman's recusal would be raised at the Senate Banking Committee's RTC Oversight Board hearings scheduled for February 24. Mr. Steiner told Mr. Stephanopoulos that he believed Mr. Altman should recuse prior to the hearing. Mr. Stephanopoulos said that would be fine. Mr. Steiner said that others in the White House may not agree. Mr. Stephanopoulos offered to "shop" the issue in the White House to determine if there was any opposition. Mr. Steiner discouraged him, saying he wanted to check with Mr. Altman first. By this time, the statute of limitations already had been extended and no Madison-related issue would be presented for a decision before Mr. Altman's appointment was scheduled to expire on March 30. According to Mr. Steiner, Mr. Altman told him that he already had decided not to recuse himself and that he did not want to revisit the issue. As a result, Mr. Steiner did not pursue the issue with Mr. Stephanopoulos. Mr. Stephanopoulos has no specific recollection of this contact.

In the days preceding the hearing, Mr. John Podesta, White House Staff Secretary, was assigned the task of monitoring hearings potentially involving Whitewater-related matters, including the upcoming RTC oversight board hearings. In this context, he consulted with Mr. Mike Levy, Treasury's Assistant Secretary for Legislative Affairs. Mr. Podesta

discussed with Mr. Levy Mr. Altman's need to be prepared to answer questions about his non-recusal -- particularly because Ms. Tigert recently had agreed to a blanket recusal. Mr. Podesta also had telephone conversations with Mr. Steiner about the upcoming hearing. At some point, Mr. Steiner told Mr. Podesta that Mr. Altman was considering announcing in his opening statement at the hearing that he expected to step down as head of the RTC on March 30, regardless of whether there was a pending nomination. Mr. Podesta relayed this information to others in the White House.

On February 23, Mr. Altman had a chance encounter with Mr. Nussbaum and they briefly noted that the nomination of Mr. Larry Simons to be head of the RTC would go to the Hill shortly. Also on February 23, Mr. Altman called Mr. Ickes. Their recollections of this conversation are different. Mr. Altman's memory is that he told Mr. Ickes he expected to announce during his testimony the following day that he would step down as the interim head of the RTC on March 30, regardless of whether a permanent CEO had been nominated by the White House. Mr. Ickes recalls that Mr. Altman said he would be testifying the following day and that he was thinking about announcing his recusal. Mr. Ickes may have assumed that Mr. Altman was referring to recusal when he said he was thinking about "stepping down." Mr. Ickes asked whether there had been any change of circumstances between the February 2 meeting and the impending hearings, and observed that if there had not, he did not understand why there would be a need for Mr. Altman to change his decision on recusal. However, he repeated that the decision was up to Mr. Altman.

Mr. Altman said he was leaving to go to an evening event and wanted Mr. Ickes to think about the issue. Mr. Altman said he would call again when he returned at about 8:30 p.m. After about 10 minutes, Mr. Ickes decided he did not want to wait for Mr. Altman's call. He called Mr. Steiner, told him about the phone call with Mr. Altman, and said he had nothing more to add to what he had said already. Mr. Ickes repeated to Mr. Steiner that any decision on recusal was up to Mr. Altman.

Before the February 24 hearing, Mr. Podesta learned that the February 2 meeting had occurred and believes he spoke to Mr. Steiner to ensure that Mr. Altman was prepared adequately to answer questions about it. Mr. Eggleston, who also was involved in preparation for the hearings, consulted Ms. Hanson on the same question. She read him a Q&A and Mr. Eggleston believed the response adequately described the meeting, as it included both the statute of limitations issue and recusal.

RTC Oversight Board Hearing Follow-up.

Mr. Altman testified on February 24. Following the hearing, Mr. Eggleston, who had been present at the hearing, expressed concern to Mr. Nussbaum, Mr. Podesta and others about the way in which Mr. Altman had responded to a question from Senator Gramm asking him to describe the substance of the communication that occurred on February 2. Mr. Altman had not mentioned recusal as one of the subjects discussed at the February 2

meeting. Mr. Sloan expressed concern that Mr. Altman also had not mentioned the September 29 and October 14 meetings in response to a question from Senator Bond about whether the RTC had ever advised the White House of the criminal referral. And Mr. Nussbaum became concerned when he was told that Mr. Altman had testified that he had arranged the February 2 meeting with Mr. Nussbaum. After a series of conversations among various White House officials concerning Mr. Altman's testimony, they concluded on March 1 that Mr. Podesta should call Mr. Altman to tell him the White House had concerns about the completeness of his testimony.

The same day, Mr. Podesta called Mr. Altman and expressed the concerns identified by the White House group. Mr. Altman told Mr. Podesta that he was considering an appropriate way to supplement his testimony regarding the February 2 meeting, although he believed that the recusal discussion could be considered as falling within his description of the procedure for reaching a decision on the statute of limitations. Mr. Altman told Mr. Podesta that he was unaware of the Fall 1993 meetings and believed his response to Senator Bond's question had been accurate. He agreed with Mr. Podesta's recommendation, however, that he discuss with Ms. Hanson whether she had additional information that would require him to supplement his testimony in response to Senator Bond's question. Mr. Altman told Mr. Podesta that he did not think his remark about Mr. Nussbaum's role in arranging the February 2 meeting required clarification.

At about this time, Mr. Lindsey learned that the Treasury press office had called the White House press office about how Treasury should respond to an inquiry from ABC News directed to Mr. Altman. The press was asking whether the White House had pressured Mr. Altman to have the RTC provide a briefing to Mr. David Kendall, the Clintons' personal lawyer, on the statute of limitations issue. Mr. Lindsey called Mr. Altman, who told him about the February 2 meeting. Mr. Altman told Mr. Lindsey that Ms. Williams had asked if the private attorneys would be briefed on this process and that he had told her he assumed so. Mr. Altman told Mr. Lindsey that this was put as a question, and that he had received no instructions from anyone at the meeting to do anything. Mr. Lindsey suggested that Mr. Altman call the reporter back and tell him that. Mr. Altman agreed.

Mr. Altman's Recusal and Discussions About Mr. Jay Stephens.

The accounts of how Mr. Altman reached his recusal decision vary. It is undisputed, however, that he recused himself on February 25, the day after the hearing. Mr. Steiner telephoned Mr. Podesta and told him that Mr. Altman had recused himself during a conversation with an editor of *The New York Times*. Mr. Podesta conveyed that news to Mr. Stephanopoulos in a brief conversation that Mr. Stephanopoulos does not recall, although Mr. Stephanopoulos does recall receiving the same information directly from Mr. Steiner.

Mr. Stephanopoulos complained to Mr. Steiner about the manner in which the recusal decision had been announced. He does not recall telling Mr. Steiner that the President was

angry at the manner of the announcement and he did not suggest that Mr. Altman reconsider his decision. In the course of this conversation, Mr. Stephanopoulos also said he had heard the RTC had retained Mr. Jay Stephens to represent the RTC with respect to Madison civil claims. He conveyed anger and frustration that Mr. Stephens could have been retained in view of his public political attacks on the President. Mr. Stephanopoulos wondered how anyone could have determined that Mr. Stephens was impartial and without conflicts under these circumstances. Mr. Steiner explained that Mr. Stephens and his law firm had been selected by an independent board of experts. He said that the retention of Mr. Stephens was a done deal and advised that it would be unwise to pursue the matter further. Mr. Stephanopoulos agreed. He did not ask Mr. Steiner to take any action regarding the Stephens appointment.

Also on February 25, Mr. Ickes and Mr. Stephanopoulos called Mr. Altman and expressed irritation about the manner in which Mr. Altman had accomplished his recusal, but they did not seek to reverse it. Mr. Stephanopoulos suggested that Mr. Altman write a letter to the President explaining his actions and Mr. Altman said he would. Mr. Stephanopoulos and Mr. Ickes also may have asked Mr. Altman about the hiring of Mr. Stephens. Mr. Altman said he did not know Mr. Stephens or that the RTC had retained him. Neither Mr. Stephanopoulos nor Mr. Ickes asked Mr. Altman to do anything about the Stephens appointment.

About the same time, Mr. Ickes also discussed the retention of Mr. Stephens with the President. The President expressed concern about Mr. Stephens' ability to be fair and impartial. The President did not direct Mr. Ickes to take any action with respect to Mr. Stephens and Mr. Ickes took no action.

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Mr. Lloyd N. Cutler
 Special Counsel to the President
 The White House
 Washington, D.C. 20500

Dear Mr. Cutler:

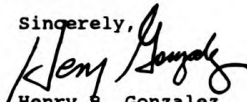
Pursuant to the bipartisan House Resolution 394, and the recent bipartisan House Leadership agreement, the Committee on Banking, Finance and Urban Affairs will hold a series of hearings on the Washington phase of the so-called Whitewater affair. I respectfully request that you testify at the first hearing on July 26, 1994, at 9:30 a.m., in Room 2128, Rayburn House Office Building.

Your testimony should focus on contacts between employees of the White House, Treasury Department and Resolution Trust Corporation (RTC) related to Madison Guaranty Savings and Loan. Please provide an overview of the contacts and your thoughts on the propriety of the contacts. In addition, please describe the steps the White House has taken to correct this situation.

Committee rules require that 200 copies of your written testimony be delivered to Room 2129, Rayburn House Office Building, no later than the close of business July 25, 1994.

Thank you for consideration. The Committee looks forward to your testimony. With best wishes.

Sincerely,



Henry B. Gonzalez
 Chairman

HBG:dk

HENRY B. GONZALEZ
20th DISTRICT, TEXAS

413 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4320
202-325-3230

HOME OFFICE
B-124 FEDERAL BUILDING
727 E. DELAMAR STREET
SAN ANTONIO, TX 78206-1206
210-229-6195

**Congress of the United States
House of Representatives
Washington, DC 20515-4320**

COMMITTEE
BANKING, FINANCE AND
URBAN AFFAIRS
CHAIRMAN

SUBCOMMITTEES
HOUSING AND COMMUNITY DEVELOPMENT
COUNCIL

CREDITORS CREDIT AND INSURANCE
INTERNATIONAL DEVELOPMENT, FINANCE,
TRADE, AND MONETARY POLICY

July 21, 1994

FILE REF

B04SL
STW

The Honorable Thomas S. Foley
The Speaker
U.S. House of Representatives
H-204 U.S. Capitol Building
Washington, D.C. 20515

Dear Mr. Speaker:

As you know, the Banking Committee is preparing to conduct hearings on the so-called Whitewater affair, pursuant to H. Res. 394. Consistent with that resolution the Committee has consulted with Special Counsel Fiske in order to assure that the hearings do not interfere with his investigation.

Mr. Fiske has notified the Committee that contrary to his earlier expectations he has been unable to conclude his investigations on the handling of Mr. Vincent Foster's official and personal papers following his death. Accordingly, Mr. Fiske has asked that witnesses on these issues not be called and that witnesses who may have been involved in the handling of Mr. Foster's papers not be questioned on that subject. Therefore if the Committee is to conduct its hearings in a manner consistent with H. Res. 394, it must respect Mr. Fiske's request.

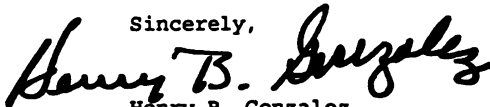
Representative Leach on June 29 characterized the Committee's initial efforts to organize its hearings as an attempt "to further narrow the already narrow approach approved by the Democratic Leadership of the full House." (Letter enclosed) In light of that, I believe the Committee would benefit from further guidance regarding the bipartisan leadership agreement announced on June 17. While I believe that it is consistent with H. Res. 394 to respect Mr. Fiske's wishes, it would be extremely helpful to have the assurances of the Leadership that this is also consistent with the June 17 agreement, given the likelihood that Minority Members may seek to characterize cooperation with Mr. Fiske as obstruction.

The Honorable Thomas S. Foley
July 21, 1994
Page 2

I feel certain that the Leadership agreement took into account the possibility that Mr. Fiske would not be able to complete as expected the "Washington phase" of his investigation. Accordingly, I would be deeply grateful if you could provide in written form either the agreement referenced in the June 17 announcement, or a modification indicating that the Leadership supports the view that the Committee should avoid the subject matter referred to by Mr. Fiske. Such guidance would ensure that the Committee's efforts to cooperate with the Special Counsel will not be inaccurately portrayed.

Finally, I want to be certain you are aware that Minority Members of the Committee on Government Operations are actively involved in the investigation of Mr. Foster's death, supposedly at the request of Mr. Leach. The most significant and ominous aspect of this is that highly confidential and secret documents have been given to these Minority Members of the Government Operations Committee by Special Counsel Fiske without any notice to the Majority or to the Banking Committee. You may have been advised of this, but if not, then this adds a note of urgency to my request for clarification.

Sincerely,

A handwritten signature in black ink, reading "Henry B. Gonzalez". The signature is fluid and cursive, with the first name "Henry" and last name "Gonzalez" clearly legible.

Henry B. Gonzalez
Member of Congress

Enclosure

The Speaker's Rooms
U. S. House of Representatives
Washington, D. C. 20515

July 25, 1994

Dear Mr. Chairman:

Thank you for your letter of July 21 in which you ask how the bipartisan leadership agreement on Whitewater hearings should be interpreted with respect to a portion of the Special Counsel's investigation which is not yet completed.

The bipartisan leadership agreement provided for hearings to be held by the Committee on Banking, Finance and Urban Affairs on three aspects of the Special Counsel's investigation. The agreement explicitly states that the hearings, quoting the provisions of H.Res. 394, will be conducted so that they will "not interfere with the ongoing investigation of Special Counsel Robert B. Fiske, Jr." The agreement also stipulates that the three areas on which hearings could be held would have to have been completed so as not to impede Mr. Fiske's "overall investigation." Finally, the agreement repeats Mr. Fiske's statement to the bipartisan leadership that he was very close to completing his investigation on all three areas.

Mr. Fiske has now told you that, contrary to his earlier expectations, his review of the handling of Mr. Vincent Foster's official and personal papers is not yet concluded. It is perfectly clear to me that the bipartisan agreement must be read to preclude inquiry by the Committee into this aspect of Mr. Fiske's investigation until Mr. Fiske has in fact concluded that aspect of the investigation. Mr. Fiske's earlier prediction was inaccurate, but that in no way alters the underlying principle of the bipartisan agreement that your Committee's hearings should be "structured and sequenced" so that they will "not interfere with the on-going investigation of Special Counsel Robert B. Fiske."

With every good wish, I am

Sincerely,


Thomas S. Foley
The Speaker

The Honorable Henry B. Gonzalez
Chairman
Committee on Banking, Finance and Urban Affairs
U.S. House of Representatives
Washington, D.C. 20515

TITLE

SENSE OF THE HOUSE REGARDING CONSTITUTIONAL OBLIGATION TO CONDUCT OVERSIGHT OF MATTERS RELATING TO OPERATIONS OF THE GOVERNMENT

Mr. GEPHARDT. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 394) to express the sense of the House that Congress has a constitutional obligation to conduct oversight of matters relating to the operations of the Government.

The Clerk read as follows:

H. RES. 394

Resolved, That it is the Sense of the House of Representatives that -

(a) Congress has a Constitutional obligation to conduct oversight of matters relating to the operations of the government, including matters related to any governmental investigations which may, from time to time, be undertaken.

(b) The Speaker, Majority and Minority Leaders should meet to determine the appropriate timetable, procedures, and forum for appropriate Congressional oversight, including hearings on all matters related to 'Madison Guaranty Savings and Loan Association ('MGS&L'), Whitewater Development Corporation and Capital Management Services Inc. ('CMS').'

(c) No witness called to testify at these hearings shall be granted immunity under sections 6002 and 6005 of Title 18, United States Code, over the objection of Special Counsel Robert B. Fiske, Jr.

(d) The hearings should be structured and sequenced in such a manner that in the judgment of the Leaders they would not interfere with the ongoing investigation of Special Counsel Robert B. Fiske, Jr.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Missouri (Mr. Gephardt) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. Michel) will be recognized for 20 minutes.

PAGE H1809

The Chair recognizes the gentleman from Missouri (Mr. Gephardt). Mr. GEPHARDT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a resolution presented by the gentleman from Illinois (Mr. Michel) and myself. It is a sense of the House resolution. It says that the Congress has a constitutional obligation to conduct oversight of matters relating to the operations of the Government, including matters relating to any governmental investigations which may from time to time be undertaken.

It states that the Speaker, the majority and the minority leader should meet to determine the appropriate timetable, procedures, and forum for appropriate congressional oversight, including hearings on all matters related to Madison Guaranty Savings & Loan Association, Whitewater Development Corp., and Capital Management Services, Inc.

It further states that no witness called to testify shall be granted immunity under certain sections of the United States Code over the objections of the special counsel, Robert Fiske.

Finally, it says that the hearings should be structured and sequenced in such a manner that in the judgment of the leaders, they would not interfere with the ongoing investigation of the special counsel, Mr. Fiske.

Over the past days and weeks, there have been a number of allegations lodged, there has been a great deal of speculation about the Whitewater Development Corp. and the facts surrounding that corporation. And I might add that that speculation is not unimportant. The American people have the right to know the facts. Congress has an obligation to try to provide those facts.

Congress of the United States
House of Representatives
Washington, DC 20515

FOR IMMEDIATE RELEASE

Contact: Jeff Biggs
 Missi Tessier
 Laura Nichols
 Tony Blankley

June 15, 1994
 (202) 225-3604
 (202) 225-0600
 (202) 225-3604
 (202) 225-3600

HOUSE HEARINGS ON "WHITewater"

The bipartisan House leadership has reached agreement on holding several days of public hearings on three aspects of the so-called Whitewater investigation now being conducted by Special Counsel Robert B. Fiske, Jr. This agreement is consistent with the provisions of H. Res. 394, adopted by the House on March 23, 1994, which states that any hearings conducted by House committees should be structured and sequenced so that they will "not interfere with the on-going investigation of Special Counsel Robert B. Fiske, Jr." and is based on Mr. Fiske's statement to the bipartisan leadership that his review of these three areas is very close to conclusion and that Congressional inquiry into these three areas, once he has completed investigation into them, will not impede his overall investigation. Mr. Fiske has specifically asked the bipartisan leadership to refrain from Congressional inquiry into the other aspects of his investigation for now.

The three subjects of the public hearings will be: the White House contacts with Treasury/RTC officials about "Whitewater"-related matters; whether the death of Assistant White House Counsel Vincent Foster was a homicide or a suicide; and the White House's handling of the contents of Foster's office during the investigation into Foster's death.

The bipartisan leadership has agreed that hearings on these three areas will be held by the Committee on Banking, Finance and Urban Affairs and that all Members of that Committee will have timely, equal access to necessary documents and may be assisted by staff of other committees of the House. The hearings will begin within thirty days of notification by Mr. Fiske that he has completed his investigation into these three areas.

**COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
HEARING PROCEDURES**

Committee Members may question witnesses only when they have been recognized by the Chairperson for that purpose, and only for a 5-minute period until all Members present have had an opportunity to question a witness. The 5-minute period for questioning a witness by any one Member can be extended only with the unanimous consent of all Members present. The questioning of witnesses in both the full and subcommittee hearings shall be initiated by the Chairperson, followed by the ranking minority party Member and all other Members alternating between the Majority and minority. In recognizing Members to question witnesses in this fashion, the Chairperson shall take into consideration the ratio of the majority to minority Members present and shall establish the order of recognition for questioning in such a manner as not to disadvantage the Members of the Committee.

